UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/47/596
13 November 1992
ENGLISH
ORIGINAL: SPANISH

Forty-seventh session
Agenda item 97 (c)

HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in El Salvador

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report on the situation of human rights in El Salvador prepared by Professor Pedro Nikken (Venezuela), Independent Expert of the Commission on Human Rights, in accordance with paragraph 12 of Commission resolution 1992/62 of 3 March 1992 and Economic and Social Council decision 1992/237 of 20 July 1992.

ANNEX

Report on the situation of human rights in El Salvador prepared by the Independent Expert of the Commission on Human Rights in accordance with paragraph 12 of Commission resolution 1992/62 of 3 March 1992 and Economic and Social Council decision 1992/237 of 20 July 1992 [1]

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 17	5
II.	OVERALL POLITICAL SITUATION	18 - 36	8
III.	CONSIDERATION OF THE HUMAN RIGHTS SITUATION	37 - 117	13
	A. Right to life	37 - 66	13
	1. Summary or arbitrary executions	38 - 57	13
	2. Attacks	58 - 62	17
	3. Death threats	63 - 66	18
	B. Enforced or involuntary disappearances	67 - 69	19
	C. Right to freedom from torture and other cruel, inhuman or degrading treatment or punishment	70 - 76	20
	D. Right to liberty	77 - 86	21
	1. Arbitrary or unlawful detention	78 - 82	21
	2. Forcible recruitment	83 - 84	22
	3. Freedom of movement	85 - 86	23
	E. Right to due process of law	87 - 98	23
	1. Pre-trial detention	89 - 90	23
	2. Extrajudicial confessions	91	24
	3. Incommunicado detention	92	24
	4. Right to legal counsel	93 - 94	25

/...

CONTENTS (continued)

		Paragraphs	Page
	5. Judicial investigation of crimes	95 - 96	25
	6. Delay in the administration of justice	97 - 98	26
F.	Freedom of the press	99 - 100	26
G.	Economic, social and cultural rights	101 - 104	27
H.	International humanitarian law	105 - 117	28
IV.	IMPACT OF THE IMPLEMENTATION OF THE PEACE AGREEMENTS ON THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS	118 - 213	31
A.	Agreements on permanent machinery for the protection of human rights	126 - 178	33
	1. The National Counsel for the Defence of Human Rights	127 - 133	33
	2. National Civil Police	134 - 147	35
	3. Judicial system	148 - 178	39
B.	Special measures to ensure the observance and safeguarding of human rights	179 - 191	45
	1. United Nations Human Rights Verification Mission	180 - 184	46
	2. The Commission on the Truth	185 - 191	47
C.	Agreements on the armed forces	192 - 204	48
D.	Other human rights agreements	205 - 213	52
	1. Political rights	206 - 208	52
	2. Economic, social and cultural rights	209 - 213	52
V.	IMPLEMENTATION OF EARLIER RECOMMENDATIONS	214 - 237	53
A.	Recommendations contained in the final report of the Special Representative	215 - 216	53

CONTENTS (continued)

		Paragraphs	Page
	B. Recommendations made by the United Nations Observer Mission in El Salvador	217 - 236	54
	C. Recommendations made by the commissions established in the negotiating process	237	59
VI.	CONCLUSIONS	238 - 258	59
VII.	RECOMMENDATIONS	259 - 269	63

I. INTRODUCTION

1. The human rights situation in El Salvador has been considered by the General Assembly since its thirty-fifth session, in 1980. On that occasion, the General Assembly adopted resolution 35/192 of 15 December 1980, in which, inter alia, it expressed its deep concern at the grave violations of human rights and fundamental freedoms in El Salvador, requested the Salvadorian authorities to take prompt action to curb the reprehensible activities of paramilitary groups, and requested the Commission on Human Rights to examine, at its thirty-seventh session, the situation of human rights in El Salvador.

2. The Commission on Human Rights, in resolution 32 (XXXVII) of 11 March 1981, requested its Chairman to appoint, after consultations within the Bureau, a Special Representative of the Commission whose mandate would be to investigate the reports about murders, abductions, disappearances, terrorist acts and all grave violations of human rights and fundamental freedoms which have taken place in El Salvador, based on information from all relevant sources, and to make recommendations as to what steps the Commission could take to help to secure the enjoyment of human rights and fundamental freedoms, including economic, social and cultural rights. The Chairman of the Commission on Human Rights at the time, after consulting with members of the Bureau, appointed as Special Representative of the Commission Mr. José Antonio Pastor Ridruejo (Spain), who submitted an annual report to the General Assembly from its thirty-sixth session in 1981 until its forty-sixth session in 1991, in addition to the reports he also submitted annually to the Commission on Human Rights.

3. Since 16 September 1991, the General Assembly has also examined five reports submitted by the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL), established in accordance with Security Council resolution 693 (1991) of 20 May 1991. The specific mandate of the Human Rights Division of ONUSAL is to verify compliance with the Agreement on Human Rights signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) at San José, Costa Rica, on 26 July 1990 (A/44/971-S/21541, annex). The first report of the Director of the Human Rights Division (A/45/1055-S/23037, annex) was prepared during the preparatory phase of the Mission and laid the basis for the subsequent reports, establishing the legal and political framework for verification based on an analysis of the San José Agreement.

4. The second report of the Director of the ONUSAL Human Rights Division (A/46/658-S/23222 and Corr.1, annex) presents a more precise analysis of the situation, based on the study of cases related to human rights and of situations which deserved special consideration and justified some preliminary recommendations. The informal cease-fire, effective as of 16 January 1992, enabled the Human Rights Division to operate under the conditions originally envisaged by the San José Agreement for the performance of its mandate and to confirm in its third report (A/46/876-S/23580, annex) the recommendations made in its previous report, as well as to make further recommendations.

5. The fourth report of the Director of the ONUSAL Human Rights Division (A/46/935-S/24066, annex) covers the period from 1 January to 30 April 1992, and reflects the major change in the activities of the Division brought about by the signing of the Peace Agreement on 16 January 1992 (A/46/864-S/23501, annex) and the actual cessation of hostilities. The Division reiterated the recommendations contained in its second and third reports and made new recommendations to the parties, based on the cases and situations which it reviewed.

6. The fifth report of the Director of the ONUSAL Human Rights Division (A/46/955-S/24375, annex) covers the period between 1 May and 30 June 1992 and also contains new recommendations.

7. The Chief of the United Nations Observer Mission in El Salvador also submitted a report to the General Assembly and to the Security Council (A/45/1055-S/23037, annex) concerning the establishment, mandate and installation of ONUSAL. In a second report he described the circumstances in which the Mission had begun to operate as a result of its having been established prior to the cessation of the armed conflict, contrary to what was envisaged in the San José Agreement.

8. The Secretary-General informed the Security Council about the activities of ONUSAL since the entry into force of the cease-fire agreement on 1 February 1992. 1/ His report referred, inter alia, to the verification of the cessation of the armed conflict, the composition and tasks of the Military Division of ONUSAL, the constitutional reforms affecting the Armed Forces, the process of reintegration of FMLN combatants, the establishment of the National Civil Police, the procedures of the judicial and electoral systems, the restoration of public administration in conflict zones, and economic and social matters such as the land redistribution process, the national reconstruction plan and the Forum for Economic and Social Consultation.

9. In his final report to the Commission on Human Rights, 2/ the Special Representative of the Commission, Mr. Pastor Ridruejo, said that, despite the fact that in 1991 there had been a decrease in the number of human rights violations as compared with 1990, he considered it necessary once again to appeal most emphatically to the Government and all the country's political authorities, institutions and forces, including the guerrilla organizations, to take all necessary steps to bring to an immediate and complete end attempts on human life, physical integrity and dignity. The Special Representative also called on the constitutional authorities of El Salvador and FMLN scrupulously to implement the agreements reached in order to ensure that the complete and lasting reconciliation of all sectors of Salvadorian society is achieved as soon as possible and recommended to both parties that they should try to inculcate in the most radicalized sectors of society a civic culture of peace and harmony which will ensure the full implementation of the agreements concluded. 3/

10. The Special Representative specifically recommended to the constitutional authorities of the Republic of El Salvador "the adoption of measures to

prevent any kind of threats and psychological intimidation against certain sectors of the population; perseverance with the judicial reform effort and the establishment of an efficient criminal investigation body under the Judiciary; and perseverance in carrying out the agrarian reform programme and other structural reforms needed to improve the population's well-being". Lastly, the Special Representative recommended to all States of the international community, in particular the richest and most developed States, that they "increase the assistance necessary to alleviate and improve the situation of Salvadorian citizens who have been displaced, made refugees or resettled as a result of the armed conflict". 4/

11. The report of the Special Representative was considered by the Commission on Human Rights at its forty-eighth session. On 3 March 1992 the Commission adopted, without a vote, resolution 1992/62, in which, inter alia, it extended its thanks to the Special Representative for his report and requested the Secretary-General to appoint an independent expert to discharge a new mandate, namely to provide assistance in human rights matters to the Government of El Salvador, consider the human rights situation in the country and the effects of the Peace Agreements on the effective enjoyment of human rights and investigate the manner in which both parties apply the recommendations contained in the final report of the Special Representative and those made by the United Nations Observer Mission in El Salvador and the commissions established during the negotiating process. In paragraph 12 of that resolution, it requested the Independent Expert to report on the outcome of his inquiries to the General Assembly at its forty-seventh session and to the Commission on Human Rights at its forty-ninth session.

12. The Economic and Social Council, in decision 1992/237 of 20 July 1992, approved the mandate established by the Commission on Human Rights.

13. Pursuant to the request in paragraph 11 of Commission on Human Rights resolution 1992/62, the Secretary-General appointed Mr. Pedro Nikken (Venezuela) as Independent Expert to discharge the mandate contained in that resolution.

14. Previously, at its forty-sixth session, the General Assembly had adopted resolution 46/133 of 17 December 1991, in which, inter alia, it decided to keep under consideration, during its forty-seventh session, the situation of human rights and fundamental freedoms in El Salvador, in conformity with the course of events in the country.

15. By a communication of 9 July 1992, the Independent Expert initiated his contacts with the Government of El Salvador, informing it that he intended to visit the country in pursuance of his mandate, and proposing the dates 27 September to 4 October 1992. By a letter dated 21 July 1992, the Permanent Representative of El Salvador to the United Nations Office at Geneva informed the Independent Expert that the Government had agreed to the proposed dates.

16. The Independent Expert made the visit according to the scheduled timetable. He had talks with the President of the Republic; with the

Presidents of the Legislative Assembly, the Supreme Court of Justice and the Supreme Electoral Tribunal; with Ministers and other senior officials competent in areas related to his mandate; and with the National Commission for the Consolidation of Peace (COPAZ). He also met the Archbishop of San Salvador; the Father Provincial of the Society of Jesus and other authorities of the José Simeón Cañas Central American University; and representatives of over 30 non-governmental organizations. He had informal contacts with political leaders and, as provided for in his mandate, held formal talks with FMLN. He received information and support from the United Nations Observer Mission in El Salvador and from the office of the country representative of the United Nations Development Programme. In addition to the city of San Salvador, the Independent Expert went to El Mozote and Perquín, where he had discussions with community leaders and visited a location in which FMLN combatants were concentrated.

17. Pursuant to the aforementioned resolutions, the Independent Expert has the honour to submit the present report to the General Assembly.

II. OVERALL POLITICAL SITUATION

18. The Independent Expert was appointed after the entry into effect of the cessation of the armed conflict, the purpose of which was to bring an end to a conflict that had lasted for over 10 years at enormous cost in terms of lives and property. The restoration of peace was the outcome of negotiations that continued through 1991 and into 1992, under the auspices of the Secretary-General of the United Nations. The Presidents of Costa Rica, Nicaragua, Honduras, El Salvador and Guatemala requested the Secretary-General to use his good offices and the Security Council gave him a mandate to do so in resolution 637 (1989) of 27 July 1989. The Secretary-General agreed to be the intermediary in the negotiations at the request of the President of the Republic of El Salvador and the General Command of the Frente Farabundo Martí para la Liberación Nacional (FMLN). The peace negotiations took place within the framework of the Geneva Agreement, signed in Geneva by the Government of El Salvador and FMLN on 4 April 1990, in the presence of the Secretary-General (A/46/551, annex).

19. The Geneva Agreement established the format of and the methodology for the negotiations. The negotiations were to take place either in the form of direct dialogue, in the presence and with the "active participation" of the Secretary-General or his Representative, or by the Secretary-General or his Representative shuttling between the parties. The Agreement also laid down the objectives of the negotiations, which were to (a) end the armed conflict by political means as speedily as possible; (b) promote the democratization of the country; (c) guarantee unrestricted respect for human rights; and (d) reunify Salvadorian society. The Agreement made provision for participation in the process by the political parties and other social organizations in El Salvador, and recognized that it was useful for the Secretary-General to maintain contacts with Salvadorian individuals and groups that could contribute to a successful outcome for the process.

20. The Geneva Agreement established a two-stage process. The "initial objective" was to reach political agreements that laid the basis for a cessation of the armed conflict and of any acts that infringed the rights of the civilian population, which would be verified by the United Nations. Once that had been achieved, the following stage would focus on the "establishment of the necessary guarantees and conditions for reintegrating the members of FMLN, within a framework of full legality, into the civil, institutional and political life of the country". Accordingly, the General Agenda and Timetable for the Comprehensive Negotiating Process, adopted in Caracas on 21 May 1990 (A/46/552-S/23129, annex), made provision for two phases, each with an identical list of issues, for the political agreements that the parties planned to reach: armed forces, human rights, judicial system, electoral system, constitutional reform, economic and social issues, and verification by the United Nations. That implied that, once a set of initial agreements had been reached on all the issues, a cease-fire, to be verified by the United Nations, would be negotiated, and negotiations would continue on the same subjects with a view to reaching agreements to supplement the earlier ones, in order to bring the armed conflict to an end.

21. From that point onwards, the negotiations were held on an uninterrupted basis through the implementation of the two modalities laid down in the Geneva Agreement. The first political agreement was signed at San José, Costa Rica, on 26 July 1990. Under the San José Agreement, the parties made specific undertakings to ensure the observance and safeguarding of human rights and laid down the terms of reference for the United Nations Human Rights Verification Mission.

22. On 27 April 1991 the parties signed the Mexico Agreements, which comprised constitutional reforms and issues referred to secondary legislation, as well as other political agreements, including an agreement on the establishment of the Commission on the Truth (see paras. 185-191, below). The constitutional reforms covered a number of topics relating to the agreed promotion of the democratization of the country and to progress in the observance of human rights. First of all, the constitutional rules governing the armed forces were amended in order to: achieve a clearer definition of the subordination of the armed forces to civilian society; transfer the powers exercised earlier by the armed forces in the area of public safety to the National Civil Police (NCP), a new body under the control of civilian authorities; and redefine the system of military justice with a view to ensuring that only cases which affect a strictly military legal interest are heard under it. The State Intelligence Agency (OIE) was set up, under the authority of the President of the Republic. Agreements on the judicial system and human rights were also adopted, including an agreement on the organization of the Supreme Court of Justice (see paras. 148-178, below) and the creation of the post of National Counsel for the Defence of Human Rights (see paras. 127-133, below). With regard to the electoral system, it was agreed that the Supreme Electoral Tribunal should be established, to replace the former Central Board of Elections. Other issues relating to the same subjects were referred to secondary legislation or future political agreements. The Legislative Assembly adopted the agreed constitutional reform within three

days of the day on which agreement was reached on it by the parties, and the Assembly ratified it on 31 October 1991 and 30 January 1992, 5/ respecting its substance. 6/

23. On 25 September 1991 the New York Agreement was signed (A/46/502-S/23082, annex). It established the National Commission for the Consolidation of Peace (COPAZ), composed of representatives of the parties to the Agreement and of the political parties, as "a mechanism for the monitoring of and the participation of civilian society in the process of the changes resulting from the negotiations". COPAZ was given extensive powers for guaranteeing and overseeing the implementation of the peace agreements. The New York Agreement also covered other items on the Caracas Agenda and contained a major change in the format of the Agenda. The parties agreed to engage subsequently in "compressed negotiations" (A/46/502/Add.1-S/23082/Add.1, annex), in the course of which all the aims of the Geneva Agreement had to be attained and, consequently, all the substantive items on the Agenda had to be dealt with before the armed conflict ended.

24. On 31 December 1991 the parties declared by the New York Act (A/46/863-S/23504, annex I) that they had reached definitive agreements bringing to an end the negotiations on all substantive items of the Caracas Agenda and the Compressed Negotiations, whose implementation would put a final end to the Salvadorian armed conflict. They also declared that an agreement had been reached on all technical and military aspects relating to the separation of their forces and the cessation of the armed conflict, including the end of the military structure of FMLN and the reintegration of its members, within a framework of full legality, into the civil, political and institutional life of the country. Under the agreement, the cessation of the armed conflict would take effect formally on 1 February 1992 and conclude on 31 October 1992. In the days following the signature of the Act, the parties reached further agreement on the timetable for the implementation of the agreements and modalities for ending the military structure of FMLN. The timetable sets out a detailed schedule for the implementation of each of the agreements reached during the process, covering the period from 1 February to 31 October 1992, with some agreements to be implemented prior to the cease-fire and others during the nine-month cease-fire itself, and yet others to be implemented following the definitive end of the conflict, once the military structure of FMLN has ended.

25. On 16 January 1992 the Peace Agreement was formalized at Chapultepec, Mexico City, when it was signed by the Negotiating Commission of the Government and the FMLN General Command and initialled by President Cristiani (A/46/864-S/23501, annex). The ceremony took place in the presence of the Presidents of Mexico, Costa Rica, Nicaragua, Honduras, Guatemala, Panama, Venezuela, Colombia and Spain and the Secretary-General of the United Nations. The Agreement is a complex, long text containing nine chapters: I. Armed forces; II. National civil police; III. Judicial system; IV. Electoral system; V. Economic and social questions; VI. Political participation by FMLN; VII. Cessation of the armed conflict; VIII. United Nations verification; and IX. Implementation timetable.

26. The cessation of the armed conflict began as scheduled. It was an extensively celebrated event in the country, and was received with excitement and anticipation by the Salvadorian people. The fighting ceased at that time, and peace is viewed as an irreversibly won right. The disappearance of the violence of the war has in itself produced a climate more conducive to respect for human dignity.

27. The members of the General Command and the leaders of FMLN who have been reintegrated into civilian life have returned to San Salvador under normal conditions. The National Commission for the Consolidation of Peace (COPAZ), which had been operating as a transitional working group under a special regime, was formally established shortly after the cessation of the armed conflict. The Legislative Assembly passed a National Reconciliation Act on 23 January 1992. The military forces were separated and concentrated, as stipulated, without any major incidents.

28. According to the information obtained by the Independent Expert, international assistance to El Salvador has not been forthcoming at the level anticipated and that might have been expected, in view of the amount of attention that the armed conflict attracted internationally and the active involvement of the United Nations, with special support from many Governments, in negotiating the peace agreements. This is an awkward situation, since the implementation of some of the agreements calls for an outlay of resources that in the short term can be expected only of international sources of assistance.

29. The International Expert noted during his visit to El Salvador that COPAZ has not been fully playing the important role entrusted to it under the agreements, as one of the most important mechanisms for safeguarding and monitoring the agreements and, to a great extent, implementing them, since it is responsible for preparing the preliminary legislative drafts necessary for the development of the agreements. It has operated at a slow pace and has been organizationally lacking, and the steps that it has taken have been less useful than foreseen since it has not even completed preparation of a number of legislative drafts for which it is responsible.

30. Implementation of the agreements has been proceeding, but the requirements with regard to the agreed form and implementation timetable have not been met. So far, as of the drafting of this report, this failure to fulfil the requirements in question has not led to a crisis in the process, but the possibility that it will indeed endanger the process cannot be excluded. Generally speaking, there is a climate of mutual suspicion and recrimination regarding implementation of the agreements. During the Independent Expert's visit to El Salvador, FMLN transmitted to him a long list of requirements not fulfilled by the Government and instances in which the Government has implemented agreements only in part or unsatisfactorily. Other political groups that oppose the Government broadly agree with that assessment and indicate also that in many cases implementation by the Government is merely a matter of form and is not indicative of a willingness to support the agreements genuinely.

31. The Government, for its part, questions the sincerity of FMLN with regard to ending its military structure and identifies it as being responsible for the illegal occupation of land and preventing mayors from taking office in conflict zones.

32. Investigating such allegations does not form part of the Independent Expert's mandate or his task; it is precisely in order to carry out such activities that the United Nations Observer Mission in El Salvador (ONUSAL) is in place. However, what does form part of his mandate is assessing the impact of the implementation of the peace agreements on the effective enjoyment of human rights, and this report therefore contains a reference to implementation of the agreements in the section on that part of his mandate (see paras. 118-213, below).

33. Moreover, it is clear that some agreements have not by any means been implemented within the time-limits originally set. The parties to the agreements had foreseen this possibility, and they stipulated that any adjustments to the timetable that might be required, for any reason, should be decided by ONUSAL in consultation with them (A/46/864-S/23501, annex, chapter IX, final provision). The Under-Secretary-General for Peace-keeping Operations, Mr. Marrack Goulding, has had to visit El Salvador several times for that purpose, and on two occasions individual instances of reprogramming of what was originally agreed have been approved, with the agreement of the parties. 7/ An important outstanding issue, as of the preparation of this report, concerns implementation of the agreement relating to land.

34. During his visit to El Salvador, the Independent Expert perceived that the deferral of implementation dates could have a serious impact on the process. FMLN indicated that the failure to implement a number of agreements in a timely manner upset the balance of the set of agreements, whose implementation had been scheduled in such a way as to ensure that some events occurred earlier than others and not vice versa. Specifically, FMLN maintained that the delay in settling the land issue, as well as the delay in the beginning of the activities of the National Public Security Academy and, consequently, those of the National Civil Police, had deprived FMLN combatants of channels for reintegration into civilian life, as provided in the agreements, which, for that very reason, had stipulated that such issues should be settled by 31 October 1992, the agreed date by which the military structure of FMLN was to have been ended. Similarly, FMLN indicated that the delay owing to the extension of the time-limits specified in respect of the Ad Hoc Commission for the Purification of the Armed Forces (see paras. 194 and 200, below) could mean that the implementation of the Commission's recommendations would take until 22 November 1992, whereas it was originally stipulated that the recommendations should be implemented by 31 October 1992.

35. This situation suggests that FMLN is questioning whether it can be required to end its military structure by 31 October 1992 while agreements that, in its view, were intended to be implemented prior to the ending of its military structure, remained unimplemented. The Government, for its part, rejects any suggestion that the ending of the military structure of FMLN

should be deferred from 31 October to a later date, since, in its view, that time-limit is not subject to any conditions. Clearly, if the parties continue to disagree totally on this issue, the time-limit of 31 October could be of great consequence for the peace process.

36. The Independent Expert has felt obliged to describe the current situation in order to emphasize the fluidity of a process that has not yet fully stabilized and is subject to changes in circumstances that, although they are a product of the complexity of the process itself, should not be occurring at a historic juncture where Salvadorians have succeeded, through negotiations, in developing a new model for a democratic, reunified society in which human rights are observed. He also very much hopes that once again an understanding of what is at stake and the overriding interest of the Salvadorian people will prompt the parties to reconcile their differences.

III. CONSIDERATION OF THE HUMAN RIGHTS SITUATION

A. Right to life

37. During the period January-May 1992, the ONUSAL Human Rights Division received 105 complaints of executions or deaths that were declared admissible and that are in the process of being verified (see A/46/955-S/24375, annex, paras. 78 and 79). Paradoxically, this number, which corresponds to the period of cessation of the armed conflict, is higher than that for the period August-December 1991 (62 complaints). Many of these cases of arbitrary deprivation of life have occurred in the western and central regions and have frequently been attributed to personnel in military escorts of the territorial service and to members of the now disbanded civil defence. The ONUSAL Human Rights Division reported that unauthorized use of regulation firearms by military personnel is widespread and that many weapons are in the hands of civilians, including members of the civil defence. In the eastern and paracentral regions, on the other hand, as in other regions, most of the violations of the right to life reported to the Mission bore the hallmarks of common crimes (ibid., para. 16).

1. Summary or arbitrary executions

38. During his visit to El Salvador, the Independent Expert was informed of the following recent cases, attributed to members of the army and security forces and civil defence.

39. Witnesses interviewed by the Independent Expert stated that on 7 June 1992, at 2230 hours, two soldiers from J.R. battalion of Military Detachment No. 2, burst into a dwelling in the village of Santa Lucia, Llano Grande canton, Sensuntepeque district, Department of Cabañas. They shot at and killed: José René Cruz Alemán, aged 22, labourer;
María Florentina Cruz Alemán, aged 35, domestic worker; and
Maria Catalina Alemán de Cruz, widow aged 55 and domestic worker. The

soldiers allegedly came from a concentration area for troops of the armed forces located in La Antena hills and were in uniform and armed with M-16 rifles, although they had scarves tied around their faces. Two minors of the Cruz Alemán family managed to escape. The soldiers left after stealing 3,000 colones. Twenty-five M-16 rifle cartridges were recovered from the scene of the crime, together with a flashlight similar to those used by the armed forces.

40. Another witness reported to the Independent Expert that Juan Antonio Turcios Mejía, aged 17, a mason's assistant, died in detention on 7 June 1992 in the Soyapango Municipal Police station, as a result of blows delivered by officer José Mauricio Melgar Ascencio and another, unidentified, officer from the same police force. The officers threw the body into a cell which was full of prisoners. Turcios Mejía died as a result of injuries to the abdomen and testicles.

41. Two uniformed members of the Fifth Infantry Brigade reportedly killed Mr. Félix Antonio Membreño Velasco, aged 54, farmer, at his home. According to the testimony received, the incident occurred on 29 June 1992, at 1930 hours, in the village of Los Angeles, Chucuyo canton, district and Department of San Vicente.

42. Two uniformed members of the Fifth Infantry Brigade carrying M-16 rifles are alleged to have been responsible for the death, on 29 June 1992, at 2000 hours, of Mr. Santos Gabino Palacios Monterroza, aged 32, administrative employee of said brigade. The incident occurred at a place called "El Tembladero", Cutumayo canton, Apastepeque district, Department of San Vicente.

43. A member of the Ciudad Delgado National Police Command, Sergeant López y López, is believed to be responsible for the death of Esmeralda Menjívar Rivas, aged 10. The child was struck by bullets to the forehead and the right arm and hand while at home in the village of Las Macetas, Ciudad Delgado district, Department of San Salvador. Sergeant López y López, and six other people, had gone to the house to arrest the victim's father, Humberto Benjamín García Rivas. The incident occurred on 5 July 1992, at 0800 hours. According to neighbours interviewed by the Independent Expert, members of the Ciudad Delgado National Police are associated with bands of delinquents and have committed a number of crimes in the area. The band is said to be headed by Dinora del Carmen Rivera Miranda and a former colonel of the disbanded Treasury Police.

44. A witness reported to the Independent Expert that Mr. Eulalio Ventura, aged 80, died at home from shots fired by soldiers of Military Detachment No. 4 quartered at the Altos de Aguacate military base. The death occurred on 11 July 1992, at 1400 hours, during a search for weapons in his house located in El Hondablo canton, Corinto district, Department of Morazán. He had been shot at point-blank range and had four bullets in his thorax and abdomen. During the incident the soldiers also fired at Alicia del Carmen Díaz, aged 5, who was hit in the left shoulder. The soldiers were in uniform, their faces

were camouflaged with paint and they were carrying M-16 rifles and 9 mm pistols together with olive-green bags with military equipment.

45. Another witness reported to the Independent Expert that on 19 August 1992, during the afternoon, two detectives from Cojutepeque National Police shot Victor Manuel González Rosales, aged 15, in the head killing him. After throwing his body on the Panamerican Highway, they raped Sulma Marisela Deras García, aged 17, who happened to be with Gonzalez Rosales, killed her with a shot to the head and left her body there. The incident occurred at the entrance to Pasaje 4, village of Díaz Nuila, Cojutepeque, Department of Cuscatlán.

46. The Independent Expert also received a statement from a witness affirming that on 2 August 1992, at 1400 hours, Mario Aranis Ruiz Ayala, aged 40, shop-keeper, was shot at point-blank range with a machine gun and killed in the municipal market of the city of Apopa, Department of San Salvador, by Juan Francisco Avila Hernández, an officer of the National Police. Members of the National Police at Apopa reportedly instituted extrajudicial proceedings accusing the victim of having earlier shot at and wounded officer Avila Hernández and officer Perez Escobar, also of the national police, for no reason. The San Salvador court dismissed those representations as unfounded and ordered that Avila Hernández be arrested; however, he is reported to be still free.

47. One witness reported that on 24 August 1992, at 1300 hours, Mr. José Mauricio Quintana Abrego, aged 52, legal counsel to the armed forces, was abducted by heavily armed individuals dressed in civilian clothes, carrying military radio transmitters and riding in a vehicle with the registration number 186-101, which had been issued to the Ministry of Defence. The victim was left seriously wounded in the Pasaje Maquilishuat, Xochilt housing estate, Santa Anita neighbourhood, city of San Salvador, blindfolded and his hands and feet tied; he died on arrival at a San Salvador hospital.

48. The Independent Expert was also informed of the murder of María Rosa Molina de Paredes, aged 65, a farmer. This incident occurred on 31 August 1992 at 2300 hours at her home on the Loncin de Leman farm, Ayutepeque canton, Chalchuapa district, Department of Santa Ana. The perpetrator is alleged to have been a uniformed soldier of the Second Infantry Brigade, carrying an M-16 rifle, who entered the victim's home with three heavily armed deserters from the same brigade.

49. Another witness stated that three officers of the National Police machine-gunned Mario Leonel Castañeda Martínez, aged 29, an electrician, who was riding a motorcycle and did not obey when ordered to stop. The incident occurred on 12 September 1992 at 1100 hours on the road from Sonsonate to Santa Ana. The victim was shot in the back and fell to the ground. The officers let him lie there bleeding for 30 minutes before driving him to a health centre, where he died. None of the officers has been brought before the judicial authorities.

50. The Independent Expert was also informed of the death of Salvador Stanley Dávila Rodríguez, aged 18, a high-school student. The incident occurred on 13 September 1992 at 0130 hours on Avenida Durán Poniente in the city of Ahuachapán, Deparment of Ahuachapán, and is attributed to Jesús Avila Sarmiento, an officer of the National Police in that locality. After the shooting, the officer left the scene together with other officers, without giving the victim any medical assistance. Members of the National Police of Ahuachapán state that the officer was acting in self-defence but this was refuted by many witnesses.

51. The Independent Expert also heard testimony from various witnesses who reported crimes bearing the hallmark of those committed by the so-called "Death squads".

52. One witness reported that on 16 May 1992, during the morning, the chairman of the cooperative "El Progreso", Mario Orlando Ramos Zaldaña, age 35, was murdered at the entrance to a medical clinic in the city of Ahuachapán, district and Department of Ahuachapán, by two individuals dressed in civilian clothes and armed with pistols who shot him at point-blank range without saying a word.

53. The murder on 2 March 1992 of Nazario de Jesús Gracias, a watchman at the FEASIES trade union building in San Salvador, caused particular concern in the country. The corpse showed indications of torture and multiple stab wounds in various parts of the body. Gracias had previously reported several death threats made by members of the National Police and the First Infantry Brigade, and in October 1991 he had been arrested by the Brigade on charges of conspiracy to subvert. During the days preceding the crime and the night on which it was committed, several witnesses observed at the scene members of the disbanded National Guard and Ulises Jiménez Tobar, in whose possession was found a card from the Ministry of Defence dated 1 November 1991 identifying him as a worker under the command of the Territorial Service of the Armed Forces and authorizing him to bear arms.

54. Another witness stated that on 7 August 1992, in the early evening, several armed men shot and killed Roberto Anaya Agreda, 48 years old, an active member of the Workers' Association of the Ministry of Public Works (ATMOP). The incident occurred at the intersection of Quinta Avenida Norte and Pasaje La Ronda in the city of Santa Ana.

55. Another member of ATMOP in the Department of Santa Ana, José Alejandro Jaco Aquino, 35 years old, conflicts secretary of the Association, was murdered on 3 August 1992 at his home in Colonia El Milagro, Primavera canton, district and Department of Santa Ana, by two men in civilian clothing armed with pistols and knives. The victim was also a member of the Municipal Board of Directors of FMLN in Santa Ana.

56. During his visit to El Salvador, the Independent Expert was also informed of the murders of: José Antonio Escalante Calderón, whose body, showing marks of torture, had been found on 19 August 1992 on the León Pintado farm,

San Jacinto canton, Coatepeque district, Department of Santa Ana; José Luis Linares, whose body had been discovered the same day near the Jutiapa River in the hamlet of San Antonio, Natividad canton, district and Department of Santa Ana; and Juan Adalberto Ayala Rivas, former member of the Treasury Police and member of the General Staff Operations Team of the armed forces, whose vehicle had been machine-gunned by unknown assailants, armed with M-16 rifles and travelling in a pick-up truck without licence plates, on 13 August 1992 at 1100 hours at kilometre 45 of the Panamerican Highway, Talpetates canton, Santo Domingo district, Department of San Vicente. Lieutenant Julio César Ramírez Vigil had ordered the victim's vehicle to be towed away without the appropriate judicial authorization.

57. The Independent Expert also received reports concerning the murder of the chairman of El Retiro Cooperative, José Dolores Flores Ascencio, which took place on 26 July 1992 at his home in the cooperative, Los Angeles canton, Conchagua district, Department of La Unión, by three men in civilian clothing armed with rifles and pistols, and the murder of Mr. Santos Tiburcio López Carballo, 50 years old, whose mutilated body was found on 2 September 1992 under Gloria Bridge, on the road from San Vicente to San Cayetano Istepeque, Department of San Vicente. The Independent Expert also received reports of the discovery of several unidentified bodies showing characteristics typical of murders carried out by so-called "death squads".

2. Attacks

58. Several non-governmental organizations expressed particular concern regarding a series of attempts on the lives of persons which had been occurring over the past few months in El Salvador. The Independent Expert was informed that on 31 July 1992, at 2300 hours, José Eduardo Pineda Valenzuela, Head of the Department of Counsel of the recently created Office of the National Counsel for the Defence of Human Rights, was wounded in the neck by a bullet inside his home, in Colonia Jardines de Cuscatlán, Merliot City, Nueva San Salvador district, Department of La Libertad, by two unknown assailants armed with pistols. As a result of the wounds suffered, the victim is said to be a quadriplegic.

59. The General Coordinator of the FMLN Committee for the Reconstruction of Usulután and San Miguel, Reyes Tomas Martínez Ramos, a 36-year-old industrial engineer, was attacked on 7 August 1992 at 2000 hours, while driving his car in Reparto Loma Linda, city of San Salvador. Three assailants armed with G-3 rifles, their faces covered with handkerchiefs, fired on his car, shattering the windshield and leaving three bullets in it. Martínez Ramos had been the political head of FMLN in the Jucuarán region. He had allegedly received public death threats from Andrés Hernández, a member of the Infantes de Marina Battalion (BIM), and COPREFA had accused him in a press communiqué of promoting land seizures in the Jucuarán district. After the attack, Martínez Ramos reportedly suffered several acts of harassment on the part of members of the National Police.

60. Florencio Menguía, aged 35, chairman of Los Anelos Cooperative and organizational secretary of the FMLN Political Committee in Rosario de Mora district, was the victim of an attack on 29 August 1992 at 2100 hours, on the La Libertad-Rosario de Mora road, Department of San Salvador. Mr. Menguía was seriously wounded in the attack, allegedly planned to look like a traffic accident.

61. The Deputy General Secretary of the Federation of Trade Unions of the Construction, Transport and Allied Industries (FESINCONSTRANS) and President of the General Association of Highway Department Workers, Gerardo Moscoso Cideos, a 46-year-old civil engineer, was attacked on 17 September 1992 at 1530 hours at the Garibaldi Restaurant, located in Colonia Montebello in the city of San Salvador, by several persons in civilian clothes armed with pistols. Moscoso Cideos was seriously wounded, receiving a bullet in the brain.

62. Commander Pablo Parada Andino (Goyo), FMLN military leader in the paracentral region, was machine-gunned while travelling towards San Vicente. Level with the canton Santa Anita, he was allegedly detained at a checkpoint by three vehicles with polarized glass. Men in military clothing armed with M-16 rifles ordered him to get out of his car and surrender his weapons. Shots were exchanged, and Mr. Parada Andino was seriously hurt, suffering four bullet wounds. FMLN has reported the case to ONUSAL.

3. Death threats

63. The Independent Expert received information regarding death threats against several prominent people and human rights activists in El Salvador. Threats warranting particular concern have been made by a possible new clandestine group which, in press releases without attribution of responsibility, has proclaimed itself the "Salvadorian Revolutionary Front (Frente Revolucionario Salvadoreño - FRS)". In a communiqué issued on 6 September 1992, it states that it represents a new alternative in the struggle to promote the most disadvantaged groups in the country, the FMLN leadership having been unable to halt the economic offensive launched by the ARENA (Alianza Republicana Nacionalista) Government against the poorest of the poor. It asks the FMLN General Command to explain the point of 12 years of struggle, more than 80,000 dead, 10,000 disappeared and thousands of comrades disabled, if the causes for which the fight is waged have multiplied and today the poor experience worse conditions than before the conflict, and it states that the dignity of a fighter cannot be bought with hoes, shovels, picks and hammers. It warns the Government that if laws that starve the Salvadorian people to death continue to be enacted, its members will take up their rifles in accordance with revolutionary justice, and it asserts that "we live to fight, and we fight to win".

64. Another clandestine group, calling itself the "Salvadorian Anti-Communist Army (Ejército Anticomunista Salvadoreño - ARDE)", left a telephone message on the answering machine of the reception desk at the Archbishopric of

San Salvador on 14 September 1992, threatening to assassinate Archbishop Monsignor Rivera y Damas "for being a communist infatuated with Catholicism". In space taken out by a group calling itself "Free El Salvador Civic Movement" (Movimiento Cívico El Salvador Libre), an insert in the Salvadorian newspaper El Mundo of 8 September 1992 threatened the Archbishop of San Salvador, calling him "the red Bishop who vouches for the self-confessed terrorists and murderers of FMLN, swearing them in as an armed political party".

65. The Independent Expert also received reports concerning death threats against the director and staff of the Salvadorian Press Agency (SALPRESS) on 27 and 29 August 1992.

66. With regard to death threats, the Director of the ONUSAL Human Rights Division emphasized the need to provide effective protection for the victims of death threats and to implement measures to halt such practices, such as those established in the Principles endorsed by the General Assembly in its resolution 44/162 of 15 December 1989. In particular, he recommended that measures should be taken to identify the authors of flyers signed by apparently clandestine organizations and to adopt regulations prohibiting the radio or television broadcasting of threatening messages, without prejudicing freedom of the press (ibid., para. 94).

B. Enforced or involuntary disappearances

67. The Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights has analysed the situation of disappearances in El Salvador in the 12 annual reports submitted to the Commission. Its latest report, 8/ notes that, of 2,581 cases of disappearances admitted by the Working Group and transmitted to the Government, 2,207 have not yet been clarified and remain pending.

68. The ONUSAL Human Rights Division declared admissible 15 complaints that in principle could represent enforced or involuntary disappearances during the period January-May 1992. However, on investigating those complaints, the Mission concluded that it had so far been unable to establish convincingly that they involved enforced or involuntary disappearances (A/46/955-S/24375, annex, para. 26). The Mission recommended that simple, flexible mechanisms should be set up to enable complainants to ascertain the whereabouts of the person concerned quickly (ibid., para. 95). The establishment by the Supreme Court of Justice of the Detainee Information Department appears to have helped to expedite the location of detained or arrested persons.

69. During his stay in El Salvador, the Independent Expert did not encounter any new case of enforced or involuntary disappearance.

C. Right to freedom from torture and other cruel, inhuman or degrading treatment or punishment

70. The ONUSAL Human Rights Division was able to confirm the use of torture in a limited number of cases but reported that it had not established the systematic nature of such abuse. From January to May 1992, four complaints of torture and 105 allegations of cruel, inhuman or degrading treatment or punishment were received (ibid., para. 30).

71. During his stay in El Salvador, the Independent Expert learned of the cases which are described below.

72. Manuel de Jesús Abrego Trinidad was ill-treated on 9 July 1992 at the National Police headquarters of Apopa, Department of San Salvador, where he was beaten with gun butts.

73. Delmy Maravilla, aged 28, single, was severely beaten and ill-treated on 3 September 1992 by members of the National Police under the command of Sergeant Rafael Ramos Guzmán and officer David Enrique Meléndez Vides, in Soyapango, Department of San Salvador.

74. Miguel Angel Arrieta Pérez, fisherman, was tortured by policemen under the command of Sergeant Oscar Echeverría on 15 September 1992, in the Municipal Police building of the port of La Libertad. He was obliged to sign a document exonerating the Municipal Police from all responsibility for the injuries caused. The Independent Expert was able to verify that Arrieta Pérez had suffered injuries to the face, shoulder, thorax and abdomen and had lesions on his wrists produced by the uninterrupted use of handcuffs. A municipal employee who was working as a driver is also alleged to have participated in the beating. Sergeant Echeverría warned Arrieta Pérez against reporting what had happened and threatened him with death if he did so.

75. The Salvadorian Human Rights Commission (non-governmental) reported to the Independent Expert that Juan Antonio Salazar had died on 7 June 1992 as a result of severe torture at the Municipal Police building of Soyapango. It also reported the cruel treatment suffered by Julio Antonio Rosales Orantes at the San Carlos barracks of the First Infantry Brigade, Department of Cuscatlán, in January 1992.

76. The ONUSAL Human Rights Division recommended that, in all verified cases of torture and cruel, inhuman or degrading treatment or punishment, legal proceedings should be instituted to investigate the facts and to detain, prosecute and punish the perpetrators, in accordance with domestic and international law. It also recommended that the periods of administrative detention provided for in domestic law should be strictly adhered to, that incommunicado detention, which is prohibited by the San José Agreement, should be prevented and that future members of the police should be given appropriate training (ibid., para. 97).

D. Right to liberty

77. The commitments entered into in the San José Agreement for the protection of the right to personal liberty were strengthened by the signing of the Peace Agreement on 16 January 1992 and the commencement of the cessation of the armed conflict on 1 February 1992. The National Guard and the Treasury Police were disbanded, the armed forces ceased to make arrests, the ONUSAL Human Rights Division carried out its verification activities, which had a deterrent effect, and the Police Division of ONUSAL provided assistance and accompanying personnel to the National Police. These measures contributed to a substantial improvement in the practical application of the right to liberty in El Salvador, although the Independent Expert learned of various violations of this right, most of which were attributable to members of the Municipal Police and of the officially disbanded territorial service and civil defence.

1. Arbitrary or unlawful detention

78. The ONUSAL Human Rights Division received a total of 261 complaints of arbitrary or unlawful detention declared admissible during the period January-May 1992 (ibid., paras. 49 and 79). It expressed particular concern about the fact that, even though the Peace Agreement provides for the dissolution of the civil defence and the replacement of the territorial service by a new system of armed forces reserves, members of those groups have continued to make arrests and some judges still address detention orders to the local commanders of the territorial service, maintaining that there are no National Police personnel in their district (ibid., para. 53). The Mission also expressed its concern about the activity of the Municipal Police and the fact that its members systematically make arrests in a manner which rarely meets the minimum legal guarantees. Even though not a security body, the Municipal Police in practice discharges functions which are comparable to those of the National Police, and its activities are an important part of the abuses committed by the police, whose repression has extended to large sectors of the population during the past few months (ibid., para. 57).

79. The ONUSAL Human Rights Division concluded that still far too little respect is being shown for the provisions of domestic law and of paragraphs 2 (b), (c) and (e) of the San José Agreement regarding the right to be arrested only if ordered by the competent authority in writing and by officers who are identified as such, the right to be informed immediately of the reasons for the arrest, the prohibition against detaining persons incommunicado and the right to be assisted without delay by the legal counsel of one's choice. Even the constitutional provision of 72 hours as the maximum period of administrative detention is sometimes not observed; nor is there effective recourse against the decisions of special police courts with respect to arrests (ibid., paras. 55 and 58).

80. The Legal Protection Office registered a total of 30 complaints of detentions during the period January-August 1992, of which 20 complaints related to persons who were subsequently released. The Legal Protection

Office reported the detention by members of the Cavalry Regiment of the armed forces of Mrs. Juana de Jesús Cerna Campos, aged 42, on 16 July 1992 in Colonia Nuevo San Juan, San Juan Opico district, Department of La Libertad. It should be noted that the armed forces are not empowered to detain or to investigate alleged abuses or offences. Yet, the person in question is being detained on Cavalry Regiment premises and is under investigation without being brought before any court. The Legal Protection Office also reported the unlawful or arbitrary detention of Hugo Armando de la O. Velásquez, José Miguel Angel Moreno and Mauricio Antonio Villalta Artega.

81. The Salvadorian Human Rights Commission (non-governmental) reported to the Independent Expert that the practice of unlawful or arbitrary detention persists, although the number of political detentions has declined. It reported that between January and August 1992, it had received 93 complaints of arbitrary or unlawful detentions, which were carried out without legal warrant and in many cases without prior identification. It reported the arbitrary detention of the directors of Comunidad Soledad Vda. de Alas, in Mejicanos, by the National Police on 12 July 1992, and the detention of Miguel Alexander Argueta, a member of the Farabundista Youth of FMLN, on 2 July 1992.

82. Where the arrest of juveniles is concerned, the ONUSAL Human Rights Division recommended that the authorities should hand minors over to the juvenile courts without delay and that adults and juveniles should be confined separately in detention centres. It also recommended increased supervision of police officials and juvenile reform centres and improved staff training (ibid., para. 100).

2. Forcible recruitment

83. The ONUSAL Human Rights Division declared admissible 136 complaints against the armed services for irregular or arbitrary recruitment for compulsory military service during the period January-May 1992. This issue was dealt with at length in the Division's second report (A/46/658-S/23222 and Corr.1, annex, paras. 107-120), which considered that irregular or arbitrary recruitment violated the right to liberty and that the two Ministry of Defence instructions on the subject failed to remedy the improper recruitment procedures and were not widely known. The fifth report of the Director of the Division stated that the work done by the ONUSAL observers was extremely important in helping to secure the discharge of irregularly recruited persons who met the requirements for exemption stipulated in the Ministry of Defence instruction on granting exemptions from compulsory military service (A/46/955-S/24375, annex, para. 59).

84. The ONUSAL observers were able to verify that children under 15 were in the FMLN ranks. The fourth and fifth reports of the Director of the Human Rights Division pointed out that irregular recruitment, on the part of both the armed forces and FMLN, gradually ceased with the signing of the Peace Agreement of 16 January 1992 (A/46/935-S/24066, annex, para. 1, and A/46/955-S/24375, annex, para. 60).

3. Freedom of movement

85. The fourth and fifth reports of the Director of the ONUSAL Human Rights Division said that freedom of movement had been completely restored with the signing of the Peace Agreement on 16 January 1992 (A/46/935-S/24066, annex, para. 1, and A/46/955-S/24375, annex, para. 61).

86. However, the Government of El Salvador has complained to the Independent Expert on repeated occasions about the practice, attributable to members of FMLN, of establishing attack points on various main roads and tracks throughout the country, with incidents occurring two or three times a week.

E. Right to due process of law

87. The ONUSAL Human Rights Division declared admissible 318 complaints of violations of the right to due process of law submitted during the period January-May 1992. The fourth report of the Director of the Human Rights Division emphasized this right (see A/46/935-S/24066, annex, paras. 19-38), because the cessation of the armed conflict had brought to the forefront the problem of the judicial protection of human rights and the structural deficiencies of the Salvadorian judicial system (see A/46/955-S/24375, annex, para. 36).

88. A number of non-governmental organizations told the Independent Expert that they were concerned at the ineffectiveness of the Salvadorian system of justice for guaranteeing the right to due process and for ensuring that human rights violations are investigated and that those guilty of violations are brought to trial and punished. These factors persist despite the presence of the ONUSAL Human Rights Division and the recent establishment of the Office of the National Counsel for the Defence of Human Rights (see paras. 148-178, below).

1. Pre-trial detention

89. The Director of the ONUSAL Human Rights Division recommended in his fourth report that persons should be subjected to pre-trial detention only where such detention was necessary to ensure their presence at the trial or to prevent obstacles being placed in the way of the investigation. He also said that the maximum period of 72 hours established by article 244 of the Code of Criminal Procedure for the conduct of investigations should be used by judges only where the gravity of the offence and the difficulties of the investigation render this strictly necessary. He reported a case in which an accused person detained on the order of a judge of first instance was held after his arrest for 70 days in a National Police cell, and another case in which an accused person had still not made a judicial statement 10 days after his arrest. He said that release from custody was so restricted and difficult to obtain that pre-trial detention had ceased to be a way of ensuring the presence of the accused at the trial and was becoming a form of advance

service of a sentence, notwithstanding the principle of presumption of innocence. Among the prison population, there is an extremely high ratio of prisoners awaiting trial to convicted prisoners (see A/46/935-S/24066, annex, paras. 30, 31 and 52).

90. The Independent Expert also met with the defence lawyer of Adolfo Aguilar Payés, who is accused of the killings of Edgardo Antonio Chacón and Gabriel Eugenio Payés Interiano. Aguilar Payés was arrested on 23 July 1989 and brought before the San Salvador Sixth Criminal Court. According to his lawyer, the only evidence against him is an extrajudicial statement given under torture to the now disbanded Treasury Police. After three years in detention, it was announced that the public hearing would be held on 28 July 1992. However, the hearing was postponed by the judge on the grounds that the case had received too much publicity and because the lawyer had refused to select jurors from among those balloted by the judge. The lawyer maintains that the balloting was not conducted as it should have been and that, although balloting is common practice, no law compels defence lawyers to use it.

2. Extrajudicial confessions

91. The Commission to Amend Salvadorian Legislation (CORELESAL) has said that extrajudicial statements "... are most frequently obtained in auxiliary bodies through violence or intimidation. ...". 9/ In common crimes, extrajudicial confessions are considered to be sufficient evidence if two witnesses testify that the accused was not acting under duress. Witnesses are often members of the auxiliary bodies to which such confessions are made. Despite this, extrajudicial confessions are often a fundamental requirement for ordering pre-trial detention (see A/46/935-S/24066, annex, paras. 20 and 21).

3. Incommunicado detention

92. Although incommunicado detention is prohibited by the Constitution, by various international treaties ratified by El Salvador and by the San José Agreement, the ONUSAL Human Rights Division found a number of cases in which detainees were being held incommunicado. The Mission said that there should be no derogation from the prohibition on incommunicado detention and that it could not be modified by the application of disciplinary measures in prison or during pre-trial detention. It recommended that that prohibition should be incorporated explicitly in the Code of Criminal Procedure (ibid., paras. 25 and 50).

4. Right to legal counsel

93. The ONUSAL Human Rights Division reported that a large proportion of prisoners, many of whom have been incarcerated for more than four or five years, have never seen a lawyer. Even prisoners who have a private defence lawyer rarely see him. The Mission also found that the majority of prisoners it interviewed in the country's main penitentiary were unaware of their right to select a defence lawyer at the start of the proceedings. Administrative transfers of detainees, without notice to judges and lawyers, make the exercise of the right to legal counsel even more difficult (ibid., para. 26).

94. The Deputy Minister of Justice informed the Independent Expert that his Ministry had been working on a number of preliminary bills relating to due process (see para. 232, below), one of which was recently approved by the Legislative Assembly. This is the Legal Aid and Public Defenders Act, the purpose of which is to guarantee respect for the right to legal counsel. The Independent Expert also believes that it is necessary to develop advanced training programmes for public defenders and to provide more resources and more court-appointed lawyers to the judicial system.

5. Judicial investigation of crimes

95. The Director of the ONUSAL Human Rights Division expressed concern at deficiencies in the investigation of crimes and drew particular attention to the fact that there had been no significant progress in the systematic investigation of attempts on human life (see paras. 220-236, below). He recommended strict respect for domestic law on the gathering of evidence (A/46/876-S/23580, annex, para. 160).

96. The judicial proceedings currently under way to establish what happened and who was responsible in the case of the reported collective summary execution at El Mozote deserve comment because of the magnitude of the crime and its impact on society. Although according to the complaint, the killings took place over 10 years ago, it was only recently that a judicial investigation was launched. That investigation requires the exhumation of skeletal remains and their analysis by highly specialized personnel. Although this was requested by the complainant and specifically recommended by ONUSAL (see A/46/876-S/23580, annex, para. 161, and A/46/955-S/24375, annex, para. 91), no decision had been taken to have the remains exhumed with the assistance of international experts in forensic anthropology. Some non-governmental organizations explained to the Independent Expert that the judge had not taken the aforesaid decision because he had been told not to by the President of the Supreme Court of Justice. When the Independent Expert raised this issue on his visit to the President of the Supreme Court, he was told that the bodies could not be exhumed until the Commission on the Truth had so requested and that foreign experts could take part only if they had the corresponding government accreditation. The President of the Court added that, since such accreditation had now been produced, the exhumations would begin on 13 October (see para. 167, below).

6. Delay in the administration of justice

97. The Director of the ONUSAL Human Rights Division reported that in El Salvador the time-limits for instituting proceedings (120 days) and conducting a trial are not adhered to. In 1991, out of 4,755 prisoners awaiting trial, criminal courts and courts of first instance passed final sentences on 1,532, of whom 745 were acquitted. The Mission found that there was a need to increase the number of judges and court personnel, to improve the physical infrastructure available to them and to provide advanced training to staff involved in the administration of justice. To ensure respect for the right to be tried without undue delay, the Mission recommended that the organization of the administration of justice and of the Public Prosecutor's Office should be strengthened by implementing the reforms of the judicial system incorporated into the Constitution as a result of the Peace Agreement.

98. The Archbishop Oscar A. Romero Christian Legal Aid Office told the Independent Expert that a radical complete overhaul of the judicial system is far from imminent. Timid attempts at change, some of which were proposed long before the end of the armed conflict, are moving ahead either very slowly or not at all. The Salvadorian Human Rights Commission (non-governmental) complained of what it views as delays and negligence in the conduct of judicial proceedings, especially proceedings to identify persons responsible for human rights violations. It reported that in such cases investigations are limited to establishing that a crime has been committed by making a visual inspection, examining the body and hearing the statements of complainants and the evidence of witnesses, and no investigations are undertaken to identify the culprits and order their arrest. It even complained of difficulties in reviewing the judicial files that its lawyers requested. In one specific case of delayed administration of justice, it reported that Pedro Antonio Portillo León had remained in prison on a charge of homicide without the name of the alleged victim being given or the place, date or circumstances of the crime being established. The defence lawyer requested a stay of proceedings but the judge took several months to rule on the appeal.

F. Freedom of the press

99. The Salvadorian Press Agency (SALPRESS) told the Independent Expert that its main office in San Salvador had been the target of arson on 2 July 1992. The fire destroyed the Agency's archives and professional equipment, and it has yet to be informed of the results of the official investigation into the fire. On 27 August 1992, the Agency received a telephone call threatening a further fire. Two days later, Ricardo Gómez, the Director of the Agency, received a death threat by telephone.

100. Many people expressed concern to the Independent Expert at the repeated publication of paid inserts in the Salvadorian press containing death threats or incitement to hatred and violence. Those inserts are placed by clandestine organizations in an attempt to undermine the rights and security of persons and the reputation of various institutions, such as the Catholic Church and

the United Nations Observer Mission in El Salvador (ONUSAL). Designed to foster hatred and division within Salvadorian society, they are appearing at a time when attempts are being made to achieve genuine national reconciliation as part of the peace process. It should be recalled that the mass media are required by Salvadorian law to demand that those placing an insert provide proof of their identity, and to reveal that identity if the content of the insert has endangered individuals. The publication of such inserts infringes article 6 (1) of the Constitution, the International Covenant on Civil and Political Rights, the American Convention on Human Rights and articles 6 and 9 of the Press Act. However, the authorities appear to have adopted a passive attitude towards them. Legal Protection told the Independent Expert that that attitude seems to indicate that the clandestine groups responsible for such inserts are not being investigated and are benefiting from a cover-up and official impunity.

G. Economic, social and cultural rights

101. The Independent Expert was informed that at 1700 hours on 17 September 1992, three individuals armed with guns opened fire on the offices of the Federation of Independent Associations and Trade Unions of El Salvador (FEASIES) and the 21 June ANDES cooperative. A passer-by was fatally wounded in the shooting. FEASIES members said that their office was under permanent surveillance by persons unknown. In May, one of these persons was searched by union members, who found on him an identification card of the Armed Forces Social Welfare Institute.

102. The Federation of Trade Unions of the Construction, Transport and Allied Industries (FESINCONSTRANS) informed the Indepednet Expert that its General Secretary had been arrested on 7 January 1992 by members of the air force.

103. El Espino cooperative, which claims to have 5,000 members, informed the Independent Expert that the Government is trying to return a large part of the El Espino estate to its former owners, even though they have already been paid over 100 million colones in compensation for the estate's expropriation. Cooperative members said that that would be a major setback for the agrarian reform process and a serious threat to the existence of other cooperatives in the reformed sector. They complained that the Government had ordered the Agricultural Development Bank to deny them farm credit. They said that El Espino estate is a symbol of the agrarian reform in El Salvador and that the Government is trying to relocate the cooperative on a 300-hectare lot on the highest part of the estate and to hand over 144 hectares to three former owners for urban development.

104. The National Salvadorian Women's Committee told the Independent Expert that in rural areas only 34 per cent of women receive medical attention during childbirth. It said that the leading cause of death among women nationwide is complications of pregnancy, such as bleeding, infection and miscarriage, which could be prevented if the necessary medical care was available. It said that 84 per cent of women living in rural areas are illiterate and that the

national illiteracy rate for women is 59 per cent. In the professional sphere, only 2 per cent of engineers, 4 per cent of lawyers and 14 per cent of doctors are women. It said that 61 per cent of economically active women are currently unemployed, even though 60 per cent of households are headed by women. In political parties and the leadership of trade unions, women are confined to such positions as secretary responsible for minutes or secretary for women's affairs. Lastly, it reported that Salvadorian women constantly face domestic violence, street violence and sexual harassment in the workplace.

H. International humanitarian law

105. The protection granted by international humanitarian law remains in effect throughout the present period of cessation of the armed conflict. The Independent Expert therefore considers it his responsibility to examine complaints of violations of this law.

106. The ONUSAL Human Rights Division declared admissible 103 complaints of violations of international humanitarian law received during the period January-May 1992. Of these, four were made against the armed forces and 99 against FMLN. The Mission reported that the acts or threats of violence imputed to FMLN were of various kinds. It concluded that when FMLN accused certain persons of having been informers for the armed forces, it was not observing the guarantees stipulated in article 6 of Additional Protocol II to the 1949 Geneva Conventions. It further concluded that FMLN threats against officials trying to do their job in conflict zones were inadmissible if they threatened integrity and security of person. It reported that action by ONUSAL had helped put an end to the impostion of the so-called "war tax" by FMLN. It felt that verification of acts of sabotage against the electrical system, attributed to FMLN, was not included in its mandate and that FMLN had, in specific cases, violated norms on the precautions to be taken against the effects of attacks on the civilian population (see A/46/955-S/24375, annex, paras. 70, 72, 73 and 76).

107. The Independent Expert has received a large number of complaints of FMLN violations of international humanitarian law from the Government of El Salvador. The Government attributes the following murders to FMLN: murder of Eulalio Ventura on 11 July 1992 in El Hondable canton, Corinto district, Department of Morazán; murder of William Esau Serrano, a former member of the Naval Infantry Battalion, on 13 August 1992 at Colonia El Tanque, town of Santa Elena, Department of Usulután; murder of José Elías Martínez Mulato on 16 April 1992 in the Department of La Libertad; murder of Pablo de Jesús Méndez Zelaya on 5 May 1992 in Aguacayo canton, La Reina district, Department of Chalatenango; and murder of Sergeant José Luis Burgos Torres on 13 May 1992 near Colonia San José Las Flores, Tonacatepeque district, Department of San Salvador.

108. The Government of El Salvador informed the Independent Expert that FMLN had threatened the following people during the period June-August 1992: Ricarda Cruz, a resident of the city of Sonsonate, threatened on 12 July 1992;

José Luis Casco Orellana, threatened with death on 9 August 1992 in Montepeque canton, Suchitoto district, Department of Cuscatlán; Gerardo Cisneros, threatened on 12 August 1992 in San Salvador, allegedly to make him sell an estate he owns in Guazapa; Benjamín Galdamez and Carmen Menjivar, members of the Dios con Nosotros cooperative, threatened on 12 August 1992 in Vainillas canton, La Laguna district, Department of Chalatenango; José Candelario Nolasco, municipal mayor, threatened on 15 August 1992 at San Luis de la Reina, Department of San Miguel; Ricardo Chacón Hernández, justice of the peace, threatened with death on 22 August 1992 in the town of La Palma, Department of Chalatenango; David Cruz Córdova, an armed forces deputy sergeant, threatened on 28 August 1992 at Colonia Naballa No. 1 in Zacatecoluca, Department of La Paz; Rafael Antonio Bonilla, threatened with death on 24 July 1992 at the Singaltique ranch in Chapeltique district, Department of San Miguel; Geremías Montoya, threatened on 26 July 1992 in the Department of Cuscatlán; María Esperanza Pérez de Navas, threatened on 3 August 1992 to make her move out of her house in the San José de Guazapa neighbourhood in the Department of San Salvador; and Catalina Hernández, threatened on 6 June 1992 in Ocotillo canton, Cacaopera district, Department of Morazán, to make her hand over the deeds to her property.

109. The Government of El Salvador also informed the Independent Expert that FMLN had abducted the following people during the period June-August 1992: Manuel Rafael Arévalo, abducted on 6 August 1992 from La Sabana ranch, Tecoluca district, Department of San Vicente; Marco Antonio Ticas Barrientos, a former soldier, abducted on 23 July 1992 in Pishische canton, Zacatecoluca district, Department of La Paz; Julián Ramos, abducted on 26 July 1992 in San Andrés hamlet, San Gerónimo canton, Villa San Gerardo district, Department of San Miguel; Carlos Antonio Ramírez Flores, abducted on 27 July 1992 in El Chorizo canton, Santiago de María district, Department of Usulután; Elías Alvarado, a soldier on active duty in the Fourth Infantry Brigade, abducted on 8 August 1992 in the town of Comalapa in the Department of Chalatenango; José León Ramos, abducted on 26 July 1992 in the town of San Juan Nuevo Edén, Department of San Miguel, by members of an FMLN patrol under the command of Sebastián Orellana; and José Mario Carbajal, aged 15, abducted on 10 June 1992 in Guachipilín canton and hamlet, Department of Chalatenango.

110. The Government of El Salvador complained to the Independent Expert that, in the period June-August 1992, FMLN continued to forcibly levy the so-called "war tax", generally using threats. It also told him that the forcible recruitment of minors into FMLN commandos and the occupation of rural land are continuing. It reported a variety of crimes against property attributable to members of FMLN. It claimed that members of FMLN armed with AK-47 and M-16 rifles on 12 August 1992 forcibly recruited a number of young men from the La Puerta, Potrerillos, Quebrachos and El Portillo cantons in the Alegría district of the Department of Usulután. On 20 July 1992, FMLN members recruited 30 young men from the town of Cacaopera in the Department of Morazán. On 13 June 1992, FMLN members recruited 75 young men from El Quebracho canton and hamlet in San Francisco Morazán district, Department of Chalatenango, forcing them out of six buses in which they were travelling.

111. The Government of El Salvador reported the following cases of land occupation by FMLN members during the period June-August 1992.

112. On 18 August 1992, members of FMLN and of the Peasant Democratic Alliance occupied the San Marcos ranch in San Franciso Menéndez district, Department of Ahuachapán. On 24 August 1992, 60 peasants led by FMLN took over 130 manzanas on La Esperanza ranch in Guazapa district, Department of San Salvador, then shared the land out between them. On 24 July 1992, FMLN members demanded that members of the Singaltique ranch cooperative in Chapeltique district, Department of San Miguel, hand over 100 manzanas for war-disabled members of FMLN.

113. It was also reported that, on 30 July 1992, FMLN members occupied land belonging to the San Luis Las Flores ranch in El Carrizal canton, Nahuizalco district, Department of Sonsonate. On 11 July 1992, members of FMLN and of the Solidarity Committee of the communities of San Miguel took over 82 manzanas owned by Delmira Amaya in Portillo Grande and La Laguna cantons, San Gerardo district, Department of San Miguel.

114. The Government reported that, on 13 July 1992, FMLN members occupied land belonging to the San Luis Las Flores ranch in Nahuizalco district, Department of Sonsonate, owned by Leonor Vda. de Guirola. That same day, FMLN members occupied 23 manzanas belonging to the San Francisco ranch in the district and Department of Ahuachapán, owned by Luis Alfaro Gutiérrez.

115. The Government of El Salvador told the Independent Expert that it was especially concerned at the fact that many authorities are unable to perform their functions because they are being prevented from returning to their areas of jurisdiction in conflict zones. By a communication dated 16 July 1992, the Government informed the Independent Expert that the administration of justice and municipal administration are only partially operational in 9 of the country's 14 departments, because judges and mayors from conflict zones have been threatened with death if they try to return to their areas of jurisdiction in those zones.

116. The Chief of ONUSAL reported that the restoration of public administration in conflict zones has been taking place gradually, in consultation with ONUSAL, at a pace that varies from region to region. He emphasized that the process can succeed only in a context of open dialogue between the formal authorities and the community organizations that performed the functions of local government during the armed conflict. 10/ The Independent Expert was informed that ONUSAL has prepared a programme for the reinstatement of mayors, which includes mechanisms for cooperation between mayors and community organizations within the institutional framework of local government in the country. Under this programme, all mayors were to have been reinstated by 15 September. However, it has not been possible to apply the programme fully and adjustments have had to be made which set back the target dates for its full implementation. Its implementation will be a major step towards the normalization of local government in former conflict zones.

117. The Government reported that on 22 July 1992, CODELUM, a so-called "front group" for FMLN, closed the mayor's office at Anamorós in the Department of La Unión and threatened to kill local residents if they disobeyed its orders. On 15 August 1992, FMLN members ordered José Candelario Nolasco, municipal mayor of San Luis de la Reina, to leave town. On 22 August 1992, FMLN members demanded that Ricardo Chacón Hernández, the justice of the peace at La Palma, Department of Chalatenango, hand over to them the keys of the mayor's office and the town jail.

IV. IMPACT OF THE IMPLEMENTATION OF THE PEACE AGREEMENTS ON THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS

118. In view of the scope of the violations of human dignity being committed in El Salvador, the promotion and protection of human rights and the introduction of structural reforms designed to guarantee and ensure respect for those rights inside the country were among the primary objectives in the peace negotiating process initiated in April 1990 within the framework laid down by the Geneva Agreement.

119. Compliance with the Peace Agreements in letter and spirit provides a real opportunity, perhaps unprecedented in the history of the country, to jettison a structure which allowed the most serious human rights violations to be committed and imposed an unjust system of economic and social control on most of the population.

120. At the outset of the negotiations, the Geneva Agreement defined the objective of the parties as being: "... to end the armed conflict by political means as speedily as possible, promote the democratization of the country, guarantee unrestricted respect for human rights and reunify Salvadorian society" (A/46/551, annex, para. 1). The complexity of the agreements and the protracted negotiations that led to them reflect the intention of the parties to seek solutions that went beyond a cessation of the armed conflict to a reduction and reform of the armed forces and the dismantling of the military structure of the FMLN. As the President of the Republic said, when he signed the Peace Agreement at Chapultepec, "... what is now beginnning to happen in El Salvador is not the re-establishment of a pre-existing peace, but the beginning of a genuine peace based on social consensus, on a harmonious relationship between social, political and ideological sectors and above all on the conception that the country is a unified whole without exclusions of any kind". It is clear that the parties forged a peace that was not just the end of war, but a collective national undertaking to build a new society from which the root causes of the conflict had been eliminated.

121. The most outstanding of those causes is in fact related to the systematic failure to respect human rights, civil and political as well as economic, social and cultural. Thus, the objective of guaranteeing "... unrestricted respect for human rights" constitutes, as it were, the spinal column of the set of agreements reached between the Government and FMLN with the support of the broadest sectors of Salvadorian society.

122. For instance, in the San José Agreement of 26 July 1990, although the meaning of "human rights" was interpreted in the broadest sense, 11/ certain priority problems were singled out requiring action and specific measures designed to prevent acts or practices threatening the life, integrity, security or freedom of the individual; to fully guarantee the freedom and integrity of the person; to ensure the effectiveness of the remedies of amparo and habeas corpus; to fully guarantee the right of all persons to associate freely with others, including trade union freedom; to fully guarantee freedom of expression; to meet the urgent needs of displaced persons and returnees as well as those living in conflict zones and to recognize the necessity of guaranteeing the effective enjoyment of labour rights (see A/44/971-S/21541, annex, paras. 1-9).

123. The Agreement also deals with State responsibility for guaranteeing human rights, an even broader mandate than that described above in that it imposes on the State the obligation to ensure the effective enjoyment of human rights by all possible means, including appropriate and accessible mechanisms for judicial and administrative protection, prevention and investigation whenever necessary in order to establish the truth, and to identify the perpetrators and apply the prescribed penalties. In that connection, the agreements envisage the introduction of new mechanisms for the protection of civil and political rights and the reform of others to bring them into line with the aforesaid mandate.

124. Economic, social and cultural rights are the subject of various provisions of the San José and New York Agreements and of one chapter of the Peace Agreement signed at Chapultepec.

125. The series of peace agreements establish various measures aimed at ensuring the effective enforcement of human rights and providing the State with appropriate instruments for discharging its obligation to its citizens and to the international community to respect and guarantee them. The agreements envisage the establishment or strengthening of permanent machinery for fulfilling that function, such as the National Counsel for the Defence of Human Rights, the National Civil Police and the judicial system. They also envisage the establishment of certain bodies and special and interim procedures relating to follow-up verification of respect for human rights, such as ONUSAL for the San José Agreement, and such as the Commission on the Truth for the investigation and evaluation of past rights violations. Agreements were also reached in the area of civil and political rights to cope with situations in which the recurrence of the violations and their seriousness call for priority action and for removing the most egregious of the reasons generally given for the violation, which was a basic objective in the agreements concerning the armed forces. Finally, there were also agreements on other human rights, including political rights and economic, social and cultural rights. The implementation of those agreements should have a favourable impact on the effective enjoyment of human rights. Accordingly, there follow comments on the four sets of agreements in turn, together with the observations of the Independent Expert on how they are being implemented.

A. Agreements on permanent machinery for the protection of human rights

126. As stated earlier, human rights form a virtual spinal column of the set of peace agreements, so that a detailed examination of the impact of their implementation on the effective enjoyment of human rights - as called for in the Independent Expert's mandate - would be equivalent to making an exegesis of the entire content of the agreements, a task which exceeds the resources available to him. The analysis might more appropriately be focused on three institutions mentioned in the agreements that are vital in shaping a sound structure for the effective protection of human rights in El Salvador. Two of them emerged from the peace process itself: the National Counsel for the Defence of Human Rights and the National Civil Police. The third is the judicial system inasmuch as its reform was discussed at the negotiating table and it was dealt with in several agreements.

1. The National Counsel for the Defence of Human Rights

127. The constitutional reform that came out of the Mexico Agreements of 27 April 1991 and was duly endorsed by the Legislative Assembly created the post of National Counsel for the Defence of Human Rights. The Legislative Assembly adopted the Act establishing the Office of the National Counsel for the Defence of Human Rights on 20 February 1992 and appointed Dr. Carlos Mauricio Molina Fonseca to the post a few days later.

128. The terms of reference of the Office include inter alia: to investigate proprio motu or on the basis of a complaint he has received cases of human rights violations; to assist alleged victims of human rights violations; to promote judicial or administrative remedies; to monitor the situation of persons deprived of their liberty; to carry out inspections; to give opinions on proposed legislation that would affect the exercise of human rights; to promote and propose such measures as he deems necessary to prevent human rights violations; to formulate conclusions and recommendations publicly or in private; to develop and publish material designed to promote knowledge of, and respect for, human rights. 12/

129. The Act establishing the Office of the National Counsel for the Defence of Human Rights contains a broad definition of those rights 13/ that helps fully to delineate the scope of the National Counsel's competence. It states further that he is to act independently in exercising his function and shall not be subject to impediment or restriction by any authority. 14/ The Act also establishes the post of Assistant Counsel for the Defence of Human Rights as well as a number of Assistant Counsels for special categories (children, women, the elderly and the environment). It appears, however, that there are many departments but little activity. Although it was not specified in the Act, the National Counsel has appointed an Advisory Council, composed of representatives of various sectors, to provide social support for the work of the Office.

130. At the beginning of July, the Office announced in the press that it would begin its work on 27 July as a strong step towards consolidation of the peace. The delay in start-up operations was attributed by ONUSAL to delays in approving the budget for the Office (A/46/935-S/24066, annex, para. 4). According to the information given by the National Counsel, the budget is still insufficient and depends largely on contributions received through international cooperation.

131. The existence of the Office of the National Counsel has not yet had an impact on the society at large or on the treatment of human rights. Although it has begun to receive complaints, it has dealt with them procedurally - deciding whether they are admissible - rather than acting on them. It has not investigated incidents that may constitute serious threats to human rights. One of its senior officers was the victim of an assault that left him a quadriplegic (see para. 58, above), and it has reacted rather timidly as regards the investigation of the facts in the case. It has not yet been ready to become involved in various situations and cases described in ONUSAL reports, where human rights violations persist and the perpetrators have not been identified or punished. It has not intervened in any significant manner that might have social repercussions.

132. That situation may be explained by the fact that it is an institution still in its infancy that has limited resources at its disposal. Yet it is urgent that the Office of the National Counsel should elicit the immediate support it will need if it is to perform its very important function in the new Salvadorian society. Unless the strong presence of the Office is recognized soon as a recourse for human rights violations, people will inevitably become sceptical about it and, what is worse, it will be seen as still another weak entity among so many others in the past history of El Salvador which were responsible for protecting citizens from the abuse of power.

133. The first thing that has to be done to counteract that scepticism is for the State to identify the strengthening of the Office of the National Counsel as a major priority and to allocate for that purpose the physical, technical and human resources it needs to perform the tasks assigned to it under the Constitution. Secondly, it is urgent to provide the staff of the Office with the technical support required to perfect their training, not only in the field of human rights as such, but in the management of bodies like the one for which they are responsible and of which the country has no prior experience. Thirdly, it is equally urgent to define priorities in terms of Salvadorian reality and of the objectives adopted for the peace process, namely, "to promote the democratization of the country, guarantee unrestricted respect for human rights and reunify Salvadorian society". The Office of the National Counsel should also maintain permanent channels of communication with the various public sector bodies so that it can act quickly in cases of human rights violations. No less important is the forging of close cooperation with the non-governmental organizations working in El Salvador because they will often serve as the channel through which complaints will reach the Office of the National Counsel for the Defence of Human Rights.

2. National Civil Police

134. The National Civil Police was established in accordance with the constitutional reform resulting from the Mexico Agreements; it was conceived by the parties as a new force with a new organization, new officers, new education and training mechanisms and a new doctrine. The National Civil Police is to be under the exclusive control of the civil authorities. 15/

135. According to the Act establishing it, the National Civil Police shall have the mission of protecting and safeguarding the free exercise of the rights and freedoms of individuals, preventing and combating all types of crimes and maintaining internal peace, tranquillity, order and public security in both urban and rural areas, adhering strictly to respect for human rights. It is to be the only armed police body with national jurisdiction. 16/

136. The parties defined the doctrine of the new force, stating that it would accord with "democratic principles; the concept of public security as a service provided by the State to its citizens, free from all considerations of politics, ideology or social position or any other discrimination; respect for human rights; the effort to prevent crime; and the subordination of the force to the constitutional authorities". They also stipulated that "the National Civil Police shall be a professional body, independent of the armed forces and free from all partisan activity" (A/46/864-S/23501, annex, chap. II, paras. 2.A and B).

137. In accordance with the peace agreements, the National Civil Police Act provides for an organization with a Director-General, an Inspector General, a Deputy Director-General for Operations, and a Deputy Director-General for Management. The Deputy Director-General for Operations has the following central divisions under his control: Public Security; Criminal Investigation; Frontiers; Finance; Arms and Explosives; Protection of Eminent Persons; Environment; and any other divisions which may be established by order of the President of the Republic. The Deputy Director-General for Management has the following divisions under his control: Infrastructure; Data-Processing; Administration; Logistics; Planning and Budget; and any other divisions which may be established by order of the President of the Republic. 17/

138. The Finance Division is under the functional control of the Ministry of Finance; Environment under the Ministry of Agriculture and Livestock; and Criminal Investigation under the Attorney-General of the Republic. The Criminal Investigation Division is of special interest, for under the Constitution the Attorney-General is responsible for directing the investigation of the offence through a criminal investigation agency. 18/ Since the Attorney-General has functional control over the Criminal Investigation Division of the National Civil Police, it is possible to staff the Division with expert policemen and avoid duplication of armed police forces having national jurisdiction, which is prohibited by the Act.

139. The parties also agreed on the establishment of a National Public Security Academy responsible for the selection and training of the personnel of the National Civil Police at all levels, for investigating, studying and publicizing matters relating to the National Civil Police and public security, and for making an annual evaluation of all National Civil Police personnel (A/46/864-S/23501, annex, chap. II, para. 5.A).

140. The agreements envisage a complex transitional regime with an implementation timetable. The duration of the transition was estimated at 24 months from the arrival of the first intake of basic-level students in the National Public Security Academy, scheduled for 1 May 1992. In accordance with the transitional regime, the National Civil Police will take up the performance of its functions in stages. For the duration of this process it was agreed that the existing National Police should continue to perform public security functions. In addition, while the first senior and executive officers of the National Civil Police are being trained, the Director-General is authorized to create provisional commands, exclusively for the National Civil Police, supported by experts and advisers, under a programme of close international cooperation and supervision coordinated by the United Nations. Lastly, it was decided that in the traditional conflict zones public security would be subject to a special regime determined by the Director-General of the National Civil Police (ibid., para. 7.B).

141. It was also agreed that personnel who had not participated directly in the armed conflict should be encouraged to join the force, without prejudice to the right of former members of the National Police and former FMLN combatants not to be discriminated against in the selection of personnel. It was specified that former members of the National Police might join the National Public Security Academy, after an evaluation of their conduct by the Director-General of the National Civil Police, under the supervision of COPAZ and subject to verification by the United Nations, provided that they met the admission requirements. The recruitment of former FMLN combatants was made subject to the requirement that they fulfilled the admission criteria and procedures established for them by COPAZ and went through the National Public Security Academy. In addition, it was expressly stipulated that most of the recruits should be selected from among persons who had not participated directly in the armed conflict and that the proportion of former FMLN combatants should be no greater than that of former members of the National Police, and vice versa. It was also agreed that special consideration should be given to the recruitment of women (ibid., para. 7.D).

142. Mr. José María Monterrey was appointed Director-General of the National Civil Police, and Mr. José Mario Bolaños Director of the National Public Security Academy. On 1 September the courses began in the building which had been used for the training of the former National Police (CETIPOL). At the time of writing of this report, the former headquarters of the Bracamonte rapid deployment infantry battalion is being prepared to receive new intakes of students. On 1 October students of the Academy began to be deployed in some of the conflict zones, in accordance with the special regime introduced for such zones by the Director-General of the National Civil Police, as part of the force known as the Transitional Auxiliary Police.

143. The structuring and the establishment of the National Civil Police in the manner envisaged in the peace agreements are designed to have a decisive effect in improving the observance and safeguarding of human rights in the country. The very concept of the force as an exclusively civil body, whose first function is to protect and safeguard the free exercise of the rights and freedoms of individuals, restores the proper role of the police in a democratic society. The independence of the National Civil Police from the armed forces is an expression of the new democratic concept of the armed forces and supplants the doctrine which made them responsible for public security, a doctrine which could be used for such constructs as the "internal enemy" and other notions of the so-called "national security" which has been employed to justify countless abuses of human rights in Latin America. The disbanding of the former National Police once the National Civil Police is in place is designed to establish the relationship between the citizens and the new police force on equally new bases of trust. The concept of the National Civil Police as the only armed police force with national jursidiction enhances the security of individuals, for they will no longer be exposed to measures adopted by various security forces. The responsibility entrusted to the National Civil Police, through the Criminal Investigation Division and under the functional control of the Attorney-General of the Republic, for investigating criminal acts and gathering evidence to identify the perpetrators of such acts ought to offer an appropriate channel for implementing the proposal made by the parties that the existing impunity of perpetrators should be ended, as well as further increasing the people's confidence that the commission of crimes, and in particular violations of human rights, will not go unpunished.

144. However, the first steps taken in implementation of the agreements with respect to the police departed in some respects from the agreed terms. That is due in some cases to failure to comply with the implementation timetable, which has fallen considerably behind schedule, with the courses starting four months late. That circumstance, although inconvenient, is not in itself a cause for alarm because it may be due to the setting of overambitious targets during the negotiations. The adjustment of the targets was in fact envisaged by the parties (ibid., chap. IX, para. 9), and changes have been made on two occasions through ONUSAL, as agreed. 19/ However, there is cause for greater concern in other respects.

145. Some comments are required on the personnel recruited for the new force. For the entry of the first intake of students in the National Public Security Academy, the assessment of the applicants who were former members of the National Police was made by the Director-General of the National Civil Police without supervision by COPAZ and verification by the United Nations, as had been agreed. Those two bodies intervened only after the candidates had taken the admission tests. For the second intake, the supervision and verification took place at the same time as the assessment but not before the admission tests. Furthermore, according to the official admission figures, the number of students who were former FMLN combatants was greater than the number of former members of the National Police, although unverified allegations were received that part of the contingent of recruits consisted of former members

of the disbanded public security forces who had concealed that affiliation. In addition, women recruits were not given special encouragement.

146. The influence of the military on the police has not been entirely eliminated. Two military advisers worked for some time in the National Public Security Academy, but they have now been removed from it. Furthermore, the situation of the Criminal Investigation Division of the National Civil Police is uncertain and very sensitive. In fact, for several years a so-called "Commission for the Investigation of Criminal Acts" has been operating in the Ministry of Justice under the control of serving officers of the armed forces and staffed to a large extent by military personnel. This Commission, although it seems to have very modern equipment obtained through international cooperation, has been able to solve hardly any of the shocking crimes which caused a public outcry and involved a serious violation of human rights. 20/ The situation is such that these shocking crimes have required recourse to extraordinary investigation methods, with the assistance of foreign police forces, and the parties have had to establish such a body as the Commission on the Truth to try to clear up at least some of them. As a result, the Criminal Investigation Commission has been perceived in some quarters as one of the causes, by reason of its lack of results at least, of the impunity with which violations of human rights have been committed. The problem lies in the strong pressure to move this Commission to the Office of the Attorney-General and make it into a "criminal investigation agency". This would make little sense in view of the Commission's poor performance with regard to human rights, and would maintain the military presence in areas which are no longer constitutionally within its competence; it would also render the Criminal Investigation Division of the National Civil Police meaningless and would seriously undermine confidence in the way in which violations of human dignity are to be investigated in the future.

147. It is essential for the National Civil Police to be established and to function in accordance with the model described in the peace agreements. This is a model of a democratic, modern police force which is an integral part of civil society and not in conflict with it. A police force which safeguards civil rights and protects the lives and property of Salvadorians within the framework of the Constitution and the law. Its emasculation would mean not only the loss of a necessary instrument for the common good but also the virtual repetition of a past in which the public security forces were known within and outside the country to be responsible for grave and systematic violations of human rights. The Independent Expert would strongly emphasize the need to continue to build the new police force along the lines set out in the peace agreements and thus to take full advantage of the opportunity which the country now has to acquire a police force suited to the democratic project which the whole nation has decided to carry out.

3. Judicial system

148. The reports of the Director of the ONUSAL Human Rights Division have repeatedly emphasized the inability of El Salvador's judicial system to ensure due legal process and establish the criminal responsibility of the perpetrators of grave violations of human rights. During the negotiations the parties approved reforms of the judicial system, most of which have not yet been put into practice but were designed to make the judiciary more independent and efficient.

149. In the Mexico Agreements of 27 April 1991 (A/46/553-S/23130, annex) the parties agreed on a number of constitutional reforms with a view to: (a) reorganizing the Supreme Court of Justice and introducing a new procedure for the election of its judges by a two-thirds majority of deputies elected to the Legislative Assembly; (b) making an annual allocation from the State budget to the judiciary amounting to not less than 6 per cent of current income; (c) creating the post of a National Counsel for the Defence of Human Rights, whose primary function should be to promote and ensure respect for human rights; and (d) electing the Attorney-General of the Republic, the Chief State Counsel and the National Counsel for the Defence of Human Rights by a two-thirds majority of deputies elected to the Legislative Assembly. Under the same Agreements, matters such as the reform of the National Council of the Judiciary, the Judicial Training School and the career judicial service were referred to secondary legislation. In the Peace Agreement signed at Chapultepec on 16 January 1992 the parties reaffirmed their accord on these matters.

150. The purpose of these reforms was to try to overcome the many shortcomings in the judicial system. The first and most serious was the judiciary's lack of any real independence and autonomy. The determinants of the judicial system could be found in the legal structure of the State itself, which in practice made the judiciary dependent on the other public authorities and thus on the political or social groups represented therein.

151. The dependent status of the judiciary was due to at least two factors, which were sufficient to determine its functioning: the budgetary system and appointments to judicial posts. Its budget depended on political decisions of the Government and the Legislative Assembly. The membership of the Supreme Court of Justice was also determined by a political decision of the Assembly; and, since the Court is not only the highest legal instance but also the administrative head of the judiciary, the performance of the judges and other members of the judiciary was affected by the power which the Court exercised over them.

152. The judiciary is the only one of the three traditional State powers which, under the Constitution, has no part in the final decisions concerning approval of the budget. The executive prepares the draft budget 21/ and the legislature approves it and issues it as a decree. 22/ This arrangement was important because of the well-known lack of resources available to the judicial system to perform its functions in a worthy and efficient manner.

Even worse, the budget allocated to justice represented a proportion of publi expenditure (about two per cent) comparable to or even lower than the allocations to other public activities which are clearly of less value than the administration of justice in a State governed by the rule of law. In short, the judiciary's budget depended on the executive and legislative organs, and they, historically, had not allocated to the judiciary sufficent resources for the adequate funding of its needs.

153. Prior to the constitutional reform resulting from the Mexico Agreements, posts in the judiciary were filled by the Supreme Court of Justice, whose judges, in turn, were appointed by the Legislative Assembly for a term of five years, at the end of which they could be confirmed or replaced. As the term of all judges of the Court started and ended on the same date and their election did not require a qualified majority, the composition of the Supreme Court depended on the political composition of the Legislative Assembly: when one party gained the parliamentary majority, it could change all the judges and elect those who were loyal to it.

154. All judges of first and second instance, justices of the peace, forensic physicians and employees of the Supreme Court were appointed and removed by the Court. The National Council of the Judiciary was empowered to propose candidates for appointment as judges of courts of first and second instance; however, under the law, half of the members of the Council were Supreme Court judges; 23/ hence the powers of the Court over the judicial system were maintained intact.

155. The judiciary thus formed a vertical structure and came under the authority of the Supreme Court of Justice, which was empowered not only to set aside judgements of the lower courts but also to appoint and remove the judges. In this way, the structural dependence of the justice system was complete: the membership of the judiciary, as such, was determined by the political composition of the Legislative Assembly, which changed every five years, and the judges individually forfeited their independence because of the control which was exercised over them by the Supreme Court of Justice. To this must be added the fact that, as the body responsible for authorizing lawyers to practise their profession and to suspend or disqualify lawyers and notaries, 24/ the Supreme Court was clearly able to restrict their independence.

156. In the framework described, it is easy to find ways of exerting pressure on judges. Whether the judgement will win them friends or make them enemies and whether the consequences will be favourable or unfavourable for their career are considerations which must influence judges when they are making a decision. Much of the time, there is no need for the external factors at work in the judicial system to actually exert pressure. Their widespread presence and their predictable reaction to a particular decision are sufficient to ensure that the judge is anxious not to alienate of them. The situation is not the fault of the judges, nor could it be altered or remedied by the courageous stand of one among them. The seeds of disruption of justice are sown in the statute regulating the judiciary, which invites the judges to

divide their loyalties rather than dedicate all of their energies to their office and duties.

157. Another frequent target of criticism is the lack of efficiency of the justice system, which is slow and unreliable, both because of the practices described and because of the lack of preparation of judicial personnel. Judicial training has been inadequate. In practice, there has been no centre for training judicial personnel and no programmes for developing and improving the professional skills of judges. The State has no body which can develop learned opinions in judicial matters and create a genuine professional awareness.

158. Judges have been poorly remunerated, a circumstance which has eroded their devotion to duty and caused them to spend part of their time exercising other gainful activities. In order to be appointed to some judicial offices, including those of justice of the peace and officer responsible for executing the writ of habeas corpus, a lawyer's qualifications were not necessary. Moreover, the support staff of the courts lacked the requisite training to be able to work efficiently.

159. The judicial reforms decided on in the peace agreements are designed to remedy the foregoing shortcomings in the ways described below.

160. According to the constitutional reform, 25/ "the judiciary shall receive an annual allocation from the State budget of no less than 6 per cent of current income". Under transitional provisions, that goal was to be reached "gradually and proportionally" within a period of no more than four years. The Independent Expert was told by the President of the Supreme Court of Justice that a budget of approximately 3 per cent has now been reached and that next year it will be increased to 4 per cent of the total current income of the State.

161. The reform described certainly represents progress towards the independence of the judiciary, whose budget will not be subject to the political will of the executive and legislative branches. None the less, this reform alone cannot eliminate structural dependence from the justice system. If the other factors remain in place, the result will be a judiciary with resources but without autonomy.

162. The constitutional reform modified the system of electing the judges of the Supreme Court of Justice. Their election remains the prerogative of the Legislative Assembly but now requires a qualified majority of two thirds. Henceforth, the judges of the Court are to exercise their functions for nine years, a term which gives them greater independence vis-à-vis a Legislative Assembly whose mandate is for only three years. In addition, instead of the judges being elected all at once, one third of them will be renewed every three years, with the result that the composition of the Court will not be determined by the political composition of the Legislative Assembly as it exists at a given time. Lastly, they are to be elected from a list of candidates drawn up by the National Council of the Judiciary, half of

the names being proposed by the associations representing lawyers in El Salvador and comprising candidates representative of the main schools of legal thought. This condition limits the political discretion of the Assembly to select judges and introduces factors of external control, including public opinion, over the election. 26/ Strictly applied, these new provisions will certainly change things for the better.

163. Another requirement introduced by the constitutional reform was that any person wishing to be a justice of the peace should be a lawyer. 27/ This has permitted a procedural reform, which, the Independent Expert was told, is about to be adopted, whereby the preparation of criminal cases would become the responsibility of justices of the peace, not of judges of first instance as at present. This reform will increase the number of investigating judges and separate the investigation phase from the decision of first instance, which should increase objectivity and expedite matters in the criminal justice system.

164. Under the constitutional reform, a person serving as a judge is not allowed to practise as a lawyer or a notary or to hold another public office. Together with the budget reform, this change should mean that judges will devote all of their attention to the performance of their judicial duties.

165. The powers of the Supreme Court of Justice as the administrative apex of the judicial system have been curtailed somewhat. The Court retains the competence to appoint judges but it must do so from lists of three candidates submitted by the National Council of the Judiciary. It maintains intact, however, its authority to dismiss judges, accept their resignation and grant them leave. This reform is a timid one, and the limited effectiveness it may have will depend in turn on how the structure of the National Council of the Judiciary is ultimately conceived (see paras. 169-178, below).

166. The Independent Expert must emphasize the unsoundness of a vertical structure in the judicial system which makes the judge administratively subordinate to the very instance which will review his judgements in appeal proceedings. If the judge is aware that his appointment and, especially, his dismissal depend on the Supreme Court, he will inevitably be subject to the Court's influence, whether that influence is direct or implicit. The independence of the justice system comes about not only through the organic separation of the judiciary from the other branches of State authority but also through the independence of the individual judges to decide the cases before them on the basis of the pleadings and evidence adduced during the proceedings, according to conviction and conscience and without the intervention of factors external to the case.

167. The Independent Expert received various complaints alleging that the President of the Supreme Court of Justice had pressured a number of judges to take or abstain from taking a particular course of action. When confronted with this in an interview with the Independent Expert, the President of the Court said that, fundamentally, that allegation lacked all basis. None the less, he acknowledged that in some cases, there had been historic

circumstances which had compelled him to follow developments in order to protect the judge from political pressure, since the majority of judges were ill-prepared to deal with a particular political environment. He explained that, even in those situations, he merely made suggestions and never attempted to impose anything. In the Independent Expert's view, the very fact that such situations can arise "in exceptional cases" bears out his opinion that the potential scope for hierarchical influence over the judge undermines the total independence which his office warrants. Furthermore, the administrative dependence of judges and each one's awareness that his professional career depends on the Supreme Court of Justice is enough to create widespread pressure on him to avoid decisions which he assumes will be unacceptable to the members of the Court.

168. Among the matters which the parties decided to refer to secondary legislation was the structure of the National Council of the Judiciary. They agreed that the composition of the Council should guarantee "its independence from the organs of State and from political parties" and that its membership should include "not only judges but also sectors of society not directly connected with the administration of justice".

169. This was, however, one of the few instances in which the constitutional amendment finally approved by the Legislative Assembly differed from the Mexico Agreements. According to article 187 of the amended Constitution, the members of the National Council of the Judiciary are to be elected by the Legislative Assembly by a qualified majority of two thirds of the elected deputies. This provision appears to be in direct conflict with what was agreed at Mexico City during the negotiations since, instead of guaranteeing the independence of the Council from the organs of the State and the political parties, it does the reverse.

170. If the foregoing constitutional provision is applied before its scope is limited by legislation, the result may be that two or more political parties which represent in the Assembly the qualified majority required may apportion between them the seats in the Council, thereby accentuating the partisanship of justice. In view of the functions which the constitutional reform assigns to the Council, such an outcome would have a devastating effect on the judicial reform as a whole.

171. It is worth mentioning that the parties seem to have realized this danger. In the Peace Agreement signed at Chapultepec on 16 January 1992, that is, after the entry into force of the constitutional amendments relating to the National Council of the Judiciary, 28/ they reaffirm that, "as already agreed in the Mexico agreements, the composition of the National Council of the Judiciary shall be such as to guarantee its independence from the organs of the State and from political parties ...". In accordance with the New York Agreement, they refer the matter to the National Commission for the Consolidation of Peace (COPAZ) to prepare the corresponding preliminary legislative draft.

172. However, COPAZ, the Independent Expert was informed, was unable to prepare the preliminary draft. The Supreme Court of Justice submitted its own draft and two non-governmental organizations, the Centre for Juridical Studies (CEJ) and the Centre for Studies in the Application of Law (CESPAD), also prepared preliminary drafts.

173. The draft prepared by the Supreme Court contains elements designed to maintain the dependence of the National Council of the Judiciary. The Council is understood to be attached to the judiciary, and the situation is made worse by the fact that the Court would have the power to dismiss members of the Council for lack of compatibility or capacity, loss of legal qualifications or gross negligence in the performance of the duties of their office. 29/ This is a matter of some concern, since the accumulation of disciplinary powers over judges and lawyers has been used to limit their independence and support the hierarchical nature of the judicial system. If, in addition, the Court had the power to punish members of the National Council of the Judiciary, that structural defect would be further accentuated.

174. The Political Commission of the Legislative Assembly established a subcommission, composed of a Supreme Court judge, six members of the political parties, two representatives of the non-governmental organizations which prepared proposals, and a representative of the Federation of Lawyers' Associations, to study the aforementioned three documents with a view to resolving the differences between the preliminary drafts. The work of the subcommission has proceeded slowly, and important matters are still unresolved.

175. In both the Mexico Agreements and the final Peace Agreement, the parties decided that the National Council of the Judiciary would be responsible for operating the Judicial Training School, whose purpose would be: to ensure a steady improvement in the professional training of judges and other judicial officials and of members of the Office of the Attorney General of the Republic; to investigate the country's judicial problems and promote solutions thereto; and to foster greater bonds of solidarity among members of the judiciary and a coherent overall vision of the function of the judiciary in a democratic State. It was also agreed that the rules for the administration and organization of the School would be such as to ensure its academic independence and its openness to the various schools of legal thought.

176. In the opinion of the Independent Expert, a centre of learning such as the one described is of paramount importance for the strengthening of the judicial system and its consolidation as an autonomous branch of government. One vital objective which undoubtedly will take time to achieve, is the formation of a new judicial ethos. It is essential that every judge and the judiciary as a whole have a coherent overall vision of the function of the judicial system, in a State in which the rule of law prevails, and that the conduct of the judiciary as a whole should adhere exclusively to the rules that can be inferred from that concept. This requires that judicial problems should be the subject of constant thought and discussion, and the Judicial Training School as envisaged in the peace agreements is the appropriate forum for considering such problems. However, the Independent Expert has not

received any information on progress made in implementing the agreements, since their implementation has obviously been hindered by the delay in enforcing the National Council of the Judiciary Act.

177. Another matter relating to the system on which agreement was reached at the peace negotiations was that of career judicial service. It was agreed that the secondary legislation would contain provisions to ensure that admission to the career judicial service was based on mechanisms guaranteeing objective selection, equal opportunities for all candidates and the selection of the best-qualified candidates. Such mechanisms will include competitive examinations and attendance at the Judicial Training School. To that end, it is necessary to amend the 1990 Career Judicial Service Act. 30/ According to information received by the Independent Expert, the Supreme Court of Justice has also prepared a draft introducing changes into that Act whereby individuals who pass the competitive examinations would not be required to attend the Judicial Training School, contrary to what was established in the agreements, which provide for both competitive examinations and attendance at the School. It has also been reported that the Centre for Juridical Studies has put forward a preliminary draft of a more general nature which was circulated informally among the deputies in the Legislative Assembly.

178. The changes to the judicial system established in the peace agreements undoubtedly represent an improvement over the previous situation and allow for even greater advances provided that the pending modifications to the secondary legislation are carried out with a view to strengthening the independence of the administration of justice. Nevertheless, in the opinion of the Independent Expert, a good deal more must be done to ensure that some of the problems still present in that system are completely resolved. On the one hand, it is clear that, since COPAZ has not prepared the preliminary drafts, very little progress has been made in the legislation which, according to the agreed timetable, should already have entered into force. On the other, it is also clear that the vertical structure of the administration of justice hampers the intellectual freedom of the judge and the independence of lawyers.

B. Special measures to ensure the observance and safeguarding of human rights

179. As has been mentioned the peace agreements contain many provisions designed to enforce and safeguard human rights. Some of these had been conceived as special temporary measures to resolve specific problems raised during the negotiations or to function on a transitional basis as part of the verification of those commitments by the United Nations.

1. United Nations Human Rights Verification Mission

180. The San José Agreement of 26 July 1990 provided for the establishment of the United Nations Human Rights Verification Mission. For administrative reasons, the Human Rights Verfication Mission was incorporated into the broader United Nations Observer Mission in El Salvador (ONUSAL) as a division of that Mission and is referred to in this report as the ONUSAL Human Rights Division.

181. The Division has broad powers to investigate the human rights situation in El Salvador as regards acts committed or situations existing as from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights. The Division can, inter alia, receive communications or complaint; visit any place or establishment freely and without prior notice; hold its meetings freely anywhere in the national territory; interview freely and privately any individual, group of individuals or members of bodies or institutions; collect by any means it deems appropriate such information as it considers relevant; make recommendations to the parties; and report, regularly to the Secretary-General of the United Nations and through him to the General Assembly (see A/44/971-S/21541, annex, paras. 13 and 14).

182. Under the San José Agreement, the Human Rights Verification Mission was to take up its duties as of the cessation of the armed conflict (ibid., para. 19). However, at the request of both parties, it began its activities on 26 July 1991, that is, one year after the signing of the San José Agreement and a little more than six months before the cessation of the armed conflict formally entered into force (on 1 February 1992). This circumstance disrupted its functioning in a climate considerably more violent and militarily polarized than that imagined when agreement was reached on its establishment.

183. The first Director of the Human Rights Division of ONUSAL was the judge Philippe Texier (France), who left his post when the year for which he had agreed to perform such functions expired. Upon completion of his work, Mr. Texier said that, in spite of the achievements made by the Human Rights Division, there continued to be violations of human rights owing to the structural causes that persisted and that it would be a long time before they disappeared. The appointment of Mr. Diego García Sayán (Peru) to succeed Mr. Texier will mark a new stage for the Human Rights Division.

184. At the time of the preparation of this report, the Human Rights Division had submitted five reports to the Secretary-General of the United Nations, in which it made a number of recommendations, which will be discussed later in this report.

2. The Commission on the Truth

185. Under the Mexico Agreements of 27 April 1991, the parties agreed to establish a Commission on the Truth, to be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the parties. The Secretary-General appointed Mr. Belisario Betancur (Colombia), Mr. Thomas Buergenthal (United States of America) and Mr. Reinaldo Figueredo (Venezuela); Mr. Betancur was elected Chairman of the Commission.

186. The Commission is entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth. To that end, the Commission must take into account:

(a) The exceptional importance that may be attached to the acts to be investigated, their characteristics and impact, and the social unrest to which they gave rise;

(b) The need to create confidence in the positive changes that the peace process is promoting and to assist the transition to national reconciliation.

187. Under the Peace Agreement signed at Chapultepec on 16 January 1992, the parties recognized the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardized, and to that end referred the issue to the Commission on the Truth for consideration and resolution. This, they expressly stated, would be "without prejudice to the principle, which the Parties also recognize, that acts of this nature, regardless of the sector to which their perpetrators belong, must be the object of exemplary action by the law courts so that the punishment prescribed by law is meted out to those found responsible" (A/46/864-S/25301, annex, chap. I, para. 5).

188. The Commission on the Truth also has a role to play under the National Reconciliation Act of 23 January 1992. That Act provides for an amnesty for all persons involved in political offences, ordinary offences related to political offences or ordinary offences committed by a group of no fewer than 20 persons. The Act, however, does not extend amnesty to persons who, according to the report of the Commission on the Truth, participated in serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth.

189. One of the Commission's tasks is to recommend statutory, political or administrative provisions prompted by the results of the investigation that it carries out. Such recommendations can include measures to prevent the repetition of such acts, as well as initiatives to promote national reconciliation.

190. The Commission has broad powers to organize its operation and its activities, which, at the time of the preparation of this report, are expanding steadily. The Commission will submit a final report containing its conclusions and recommendations within six months of its establishment, that is, by 13 January 1993. The parties have pledged to implement the Commission's recommendations.

191. The functions of the Commission on the Truth under the aforementioned agreements and the National Reconciliation Act, taken as a whole, correspond to the needs of the peace process and the long-cherished hopes of civilian society. On the one hand, the Commission has the powers to investigate acts of violence of exceptional importance that offend human dignity and to make specific recommendations. On the other, both the Peace Agreement signed at Chapultepec and the National Reconciliation Act have recognized the Commission's important role in putting an end to impunity. That is why, even in the narrow time-frames and area in which the Commission operates, its work can provide the means whereby society learns the truths which have remained hidden because the ordinary methods have been inadequate to investigate them, and whereby the judicial system is able to act in conformity with the imperatives that result from these truths. These are the foundations or the essential requirements on which national reconciliation can be solidly based. Moreover, this must be the beginning of a new legal and political reality in which attacks against human rights and all forms of violence against individuals for political reasons do not go unpunished but rather elicit a prompt and effective response from the State machinery responsible for investigating the facts, identifying the culprits and meting out the prescribed punishment, as well as redressing the offence. That is why it is essential for the parties to accept, with all their implications, any recommendations that are made by the Commission on the Truth, and to ensure their immediate and full implementation, according to the terms that they have pledged to observe.

C. Agreements on the armed forces

192. One of the most prominent measures to remove the causes of human rights violations has been the overhaul of the armed forces through the constitutional reforms provided for in the Mexico Agreements of 27 April 1991 and through the Peace Agreement signed at Chapultepec on 16 January 1992. The function of the armed forces is limited to defending the sovereignty of the State and the integrity of its territory. The constitutional reforms, like the agreements on the doctrine and the educational system of the armed forces, underscore the subordination of the armed forces to civilian authority in accordance with principles deriving from the rule of law, the pre-eminence of human dignity and respect for human rights.

193. Contrary to the provisions of the revised Constitution, which assigned a continuing and general role to the armed forces in the maintenance of domestic peace and public safety, the constitutional reforms authorize action in that area by the armed forces only in totally exceptional cases, where the normal

means of maintenance have been exhausted, and that only by special decision of the President of the Republic and under the strict supervision of the Legislative Assembly, which may, at any time, order the cessation of such exceptional measures. 31/

194. A process of purification of the armed forces was agreed upon "within the framework of the peace process and with a view to the supreme objective of national reconciliation, based on evaluation of all members of the armed forces by an ad hoc Commission". The Ad Hoc Commission was composed of Reynaldo Galindo Pohl, Abraham Rodríguez and Eduardo Molina Olivares. After requesting a 30-day extension beyond the period originally allotted for the completion of its work, it submitted its report to the President of the Republic and to the Secretary-General of the United Nations on 22 September 1992. The Government was to have 30 days from the date of submission of the Commission's conclusions to take the corresponding administrative decisions and 30 more days to implement them (see A/46/864-S/23501, annex, chap. I, paras. 3 and 3.J).

195. It was also agreed that there would be a reduction of the armed forces, "to a size appropriate ... to the functions assigned to them by the Constitution within the framework of the constitutional reform resulting from the Mexico Agreements" (ibid., para. 4). The reduction plan, with the timetable for its execution, has been submitted by the Government to the Secretary-General of the United Nations, and the United Nations will monitor its implementation. Related to the matter of reduction is the disbanding of the special units known as "rapid deployment infantry battalions" (BIRIs). Thus far, the Bracamonte and Belloso BIRIs have been demobilized. In addition, a decree disbanding the civil defence units has been issued and a new Military Service and Reserves Act has been promulgated, replacing the old system of territorial service and forcible recruitment.

196. Another especially germane agreement is the one disbanding all public security forces, which, under the old system, functioned within the organizational structure of the armed forces. The abolishment of two of these forces - the National Guard and the Treasury Police - was scheduled to occur 30 days after the cessation of hostilities and has now officially taken place. The parties stipulated that their members should be incorporated into the army. The third public security force - the National Police - will temporarily retain its public safety functions during the gradual deployment of the National Civil Police, established under the same peace agreements, as noted elsewhere in this report. Special conditions have been laid down by which former officers of the National Police may, after evaluation, be incorporated into the National Civil Police.

197. As part of the agreements on the armed forces it was also decided to abolish the National Intelligence Department and to create "a new entity to be called the State Intelligence Agency, which shall be subordinated to civilian authority and come under the direct authority of the President of the Republic" (ibid., para. 7.A).

198. The Peace Agreement signed at Chapultepec envisages important preventive measures to forestall activities by illegal groups that have committed atrocious attacks against human dignity and are known as "death squads". One such measure is the regulation of private security services, whereby it was agreed "to regulate the activities of all those entities, groups or persons who provide security or protection to private individuals, corporations or State institutions, in order to guarantee the transparency of their activities and also their strict subordination to the law and to respect for human rights" (ibid., para. 10.D). To that end, the parties expressed their agreement with the outline of a preliminary legislative draft, which they referred to the National Commission for the Consolidation of Peace (COPAZ) (ibid., annex, annex I). The same purpose is served by other points agreed upon in the Peace Agreement, like the proscription of paramilitary bodies and the disbanding of civil defence units (ibid., chap. I, paras. 10.A and B) and the commitment to "cancellation of licences for private individuals to bear weapons that are for the exclusive use of the armed forces, and immediate recall of such weapons" (ibid., para. 12.E).

199. Compliance with all the agreements on the armed forces, especially those highlighted in the previous paragraphs, is expected to have a positive impact on the effective enjoyment of human rights by Salvadorians. According to the information available at the time that this report was being written, some of the substantive agreements on the armed forces had been implemented. The National Guard and the Treasury Police have, for instance, been officially abolished as public security forces, the Bracamonte and Belloso BIRIs have been demobilized, the civil defence units have been officially disbanded, and a new Military Service and Reserves Act has been promulgated.

200. Specific provisions of the agreements on the armed forces, however, still have to be put into effect. In some cases, the matters involved have to do with the timetables for implementation and hence there is generally no need to focus on them. Nevertheless, a special comment has to be made on one point which, given its importance and the stage that has been reached in its implementation at the time of this report, has aroused high expectations in Salvadorian society. This is the report of the Ad Hoc Commission responsible for vetting the members of the armed forces with a view to the purification agreed to by the parties. Since this report has now been given to the President of the Republic, the deadlines for its application have not been set, as indicated earlier. The implementation of the conclusions of the Ad Hoc Commission according to the agreed conditions is crucial for testing whether the peace process has instituted genuine change in Salvadorian society. Conversely, a failure to fully observe the prescribed requirements might introduce a degree of scepticism and discouragement regarding the true subordination of the armed forces to civilian authority and the real scope of the peace agreements.

201. In other cases, the implementation of provisions of the agreements is pending because it has not taken place on schedule. For instance, while the members of the new Academic Council of the Military College have been appointed, the curricula and study programmes have still not been revised to

include, "in addition to military and technical subjects, scientific and humanistic studies in order to provide an all-round education which gives students the necessary skills to participate actively in the institutional life of the country and promotes at all times a harmonious relationship with civilian society, as well as their normal activities as members of that society" (ibid., para. 2.C).

202. Also pending is the recall of weapons in the hands of private individuals. It is well known that military weapons are used in acts of violence attributed by the authorities to common criminals. There can be no denying that such a situation implies not only a disregard for an objective set by the Peace Agreement signed at Chapultepec but also, under any circumstances, a constant and growing danger to the lives and safety of the population.

203. The legislation regulating the activities of all the entities, groups or persons who provide private security or protection has not yet been enacted. Likewise, although the civil defence and territorial service units have been officially disbanded, witnesses have testified that some former members of those bodies continue to bear arms and continue to make arrests by order of the courts (see paras. 51 and 78, above). The situation described indicates that additional efforts must be made to put fully into practice all that was decided in the Peace Agreement signed at Chapultepec on the subject of paramilitary bodies (A/46/864-S/23501, annex, chap. I, para. 10).

204. There is another instance in which the true scope of the decision taken to implement the agreements has not been realized, namely, the abolition of the National Intelligence Department (DNI) and its replacement by the State Intelligence Agency (OIE). Actually, although that has officially been done and the Director of the new body has been appointed, in practice there has been no transfer of duties or facilities from the DNI to the State Intelligence Agency. The new Director informed COPAZ that he does not know what has become of the files, equipment and other appurtenances of the post he is now assuming, for which budgetary funds have not yet been allocated. There is no news, moreover, of the staff of the abolished DNI, because none of its former members has asked to be incorporated into the new body, after undergoing the evaluation provided for in the agreements (ibid., para. 7.F), and the alternative system of compensation also mentioned in them has not been applied (ibid., para. 7.E). Given these circumstances, the thinking in certain quarters is the Independent Expert was informed, that the abolition of the Department and the establishment of the State Intelligence Agency have been nothing more than a formality under the decrees so stipulating, and that the former body continues to operate in secret while the new one does not in reality exist.

D. Other human rights agreements

205. The agreements also cover other human rights. With regard to political rights, changes in the electoral system are planned. 32/ Agreements have also been reached on economic, social and cultural rights. 33/

1. Political rights

206. In the Mexico Agreements, the parties agreed to establish a Special Commission, under the authority of the new Supreme Electoral Tribunal, to study a comprehensive reform of the electoral system. However, the then Central Board of Elections prepared draft amendments which it submitted to the Legislative Assembly. The Peace Agreement signed at Chapultepec requested COPAZ to appoint the aforesaid Special Commission to study the Board's preliminary draft amendments to the Electoral Code. COPAZ appointed a Special Electoral Subcomission, which prepared preliminary draft amendments that are still awaiting approval by the full meeting of COPAZ. The amendments were to have been approved by 31 May 1992, according to the agreed timetable.

207. The Supreme Electoral Tribunal, for its part, urgently requested UNDP to assist it in preparing a project which would deal with various problems relating to voter identification. A United Nations electoral mission headed by Mr. Horacio Boneo visited the country from 13 to 23 August 1992 and submitted its report on 25 August.

208. The question of political participation by FMLN as envisaged in the Peace Agreement signed at Chapultepec is related to the above issue (A/46/864-S/23501, annex, chap. VI). On 30 September 1992, FMLN filed with the Supreme Electoral Tribunal its application for legalization as a political party. This application was being processed at the time of drafting of this report.

2. Economic, social and cultural rights

209. In the Peace Agreement signed at Chapultepec, the parties stated: "One of the prerequisites for the democratic reunification of Salvadorian society is the sustained economic and social development of the country. At the same time, reunification of Salvadorian society and a growing degree of social cohesion are indispensable for fostering development. Hence, the set of agreements required to put a definitive end to the armed conflict in El Salvador must include minimum commitments to promote development for the benefit of all sectors of the population" (ibid., chap. V, para. 1).

210. It was agreed to take steps to deal with the agrarian problem and ensure the legal transfer of land to landless peasants and small farmers designated by law as beneficiaries of the agrarian reform. To that end, it was agreed to allocate lands in excess of the constitutional limit of 245 hectares, lands offered for sale to the State and State-owned lands not currently part of a

forestry reserve. With regard to the latter, preference was given to "former combatants of both Parties who so request voluntarily, are of peasant origin and familiar with farming, and possess no land of any kind" (ibid., para. 2).

211. It was also agreed to respect the current land-tenure situation in conflict zones until a satisfactory legal solution for the definitive land-tenure system is arrived at. This commitment included the provision that "except for particularly complex cases, the Government of El Salvador shall legalize the land-tenure situation in conflict zones definitively within six months from the signing of the cease-fire agreement, granting, as appropriate, individual or collective title to the land" (ibid., para. 3.E).

212. As has been stated elsewhere in this report, implementation of the agreements concerning land is one of the trickiest problems facing the peace process. Complaints have been made against the Government for honouring the commitments made and against FMLN for occupying land. This issue is indissolubly linked with the causes of the armed conflict that swept the country and must be resolved if social justice is to be done and the country's stability ensured. At the time of drafting of this report, the United Nations was actively involved in efforts to arrive at a final agreement on the matter.

213. The agreements reached on this issue also include the establishment of a Forum for Economic and Social Consultation "in which representatives of the Government, labour and the business community shall participate on an equal footing for the purpose of working out a set of broad agreements on the economic and social development of the country for the benefit of all its inhabitants". The Forum is a plausible mechanism and highly appropriate for the present situation. However, since the private sector joined the Forum only very recently, it is not yet possible to evaluate its functioning and real usefulness.

V. IMPLEMENTATION OF EARLIER RECOMMENDATIONS

214. The Independent Expert's mandate also includes investigating how the two parties are implementing the recommendations contained in the Special Representative's final report and those made by the United Nations Observer Mission in El Salvador and by the commissions established in the negotiating process.

A. Recommendations contained in the final report of the Special Representative

215. In his final report, 2/ the Special Representative for El Salvador of the Commission on Human Rights called most emphatically on the parties "scrupulously to implement the agreements reached in order to ensure that the complete and lasting reconciliation of all sectors of Salvadorian society is achieved as soon as possible". 34/ The Special Representative also specifically recommended to the constitutional authorities of El Salvador:

(a) The adoption of measures to prevent any kind of threats and psychological intimidation against certain sectors of the population;

(b) Perseverance with the judicial reform effort and the establishment of an efficient criminal investigation body under the judiciary;

(c) Perseverance in carrying out the agrarian reform programme and other structural reforms needed to improve the population's well-being. 35/

216. In the present report, observations have been made which show that the Special Representative's recommendations are still far from being implemented. This is true with regard both to the scrupulous implementation of agreements, given the earlier-mentioned difficulties that were facing the process at the time of drafting of this report (see paras. 28-36, above) and to the specific recommendations. This report has described how there continue to be situations in which death threats are made without any action being taken to stop them, because even the mass media are used freely for this purpose (see paras. 63-66 and 100, above). This report has also commented on the state of the judicial system where, some reforms notwithstanding, a number of the commitments made in the peace agreements have yet to be honoured. Moreover, those commitments do not solve all the problems that characterize the administration of justice (see paras. 148-178, above). This report has also commented on the critical dilemma facing criminal investigation policy and the risk that the Criminal Investigation Division of the National Civil Police might be weakened (see para. 146, above). The report has also described how the problem of implementing the agreements concerning land is one of the trickiest issues facing the peace process.

B. Recommendations made by the United Nations Observer Mission in El Salvador

217. The San José Agreement on Human Rights established that the United Nations human rights verification mission in El Salvador could "make recommendations to the Parties on the basis of any conclusions it has reached with respect to cases or situations it may have been called upon to consider". The parties, in turn, undertook to "give their earliest consideration to any recommendations made to them by the Mission" (A/44/971-S/21541, annex, paras. 14 (g) and 15 (d)).

218. However, this unequivocal political commitment has not resulted in the effective implementation of the recommendations made by ONUSAL. In its reports, the Mission reiterated its request to the parties to provide information on the action taken to comply with the recommendations contained therein. On 7 January of this year, the Mission wrote to both the parties requesting information on the follow-up given to its recommendations. FMLN responded on 27 April. As for the Government, the Independent Expert was informed that the President of the Republic ordered that top priority should be given to implementing the recommendations and also that assistance should be sought from ONUSAL to that end.

219. The Mission noted that its recommendations have been complied with "in a piecemeal rather than a systematic manner", leading to the solution of individual cases rather than to qualitative transformations likely to generate a "will of the State expressed in clear guidelines resulting in consistent behaviour" (A/46/955-S/24375, annex, paras. 108 and 112). Although the Independent Expert will expand on the results of his investigation into the implementation of the Mission's recommendations in his next report, a number of situations which are especially representative of the deficiencies observed in this regard are described below.

220. ONUSAL has made repeated recommendations concerning the right to life and to integrity and security of person. In its third report, it noted that the systematic failure by the Government of El Salvador to implement the rules of domestic and international law requiring the prevention, investigation, trial and punishment of conduct that can be equated with summary or arbitrary executions was an indication of Government responsibility, although there were no accusations or evidence that Government officials were directly implicated in the deaths in question either by act or by omission (see A/46/876-S/23580, annex, paras. 28-32). The Mission recommended observance of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162 of 15 December 1989.

221. In his fifth report, the Director of the ONUSAL Human Rights Division recommended that the National Police should be provided with the necessary material resources to carry out its functions and to ensure that it maintains professional standards in carrying out proper investigations. It recommended that judges should use the powers of investigation accorded under the law and improve coordination with the National Police. It also considered it essential that the autonomy and independence of the Public Prosecutor's Office should be strengthened and, to that end, drew attention to the United Nations Guidelines on the Role of Prosecutors and, in particular, those concerning prosecutors in criminal cases (A/46/955-S/24375, annex, paras. 90 and 92).

222. In this connection, it recommended that prosecutors should play an active role in initiating proceedings and investigating crimes and that the Attorney General of the Republic should use all the powers available to him under the judicial system, including that of appointing special commissions to clear up certain cases, as envisaged in article 193(7) of the Constitution. It also recommended that a register of victims of deaths from other than natural causes might be established.

223. The same report, however, expresses concern at the "lack of any institutional response with regard to the protection of the right to life and to integrity and security of person. No significant progress has been made in the systematic investigation of attempts on human life ..." (ibid., para. 110).

224. With regard to death threats, the Director of the ONUSAL Human Rights Division emphasized the need to provide effective protection for the victims of death threats and to implement measures to halt such practices, such as

those established by the Principles endorsed by the General Assembly in its resolution 44/162 of 15 December 1989. In particular, he recommended that measures should be taken to identify the authors of flyers signed by apparently clandestine organizations and to adopt regulations prohibiting the radio or television broadcasting of threatening messages, without prejudicing freedom of the press (ibid., para. 94). These recommendations have yet to be implemented.

225. ONUSAL recommended that simple, flexible mechanisms should be set up to enable persons complaining of enforced disappearances to ascertain the whereabouts of the person concerned quickly. It urged the adoption of measures to eliminate the practice of abductions (ibid., paras. 95 and 96).

226. Concerning torture and other cruel, inhuman or degrading treatment or punishment, ONUSAL recommended that in all verified cases of such abuses, legal proceedings should be instituted to investigate the facts and to punish the perpetrators (ibid., para. 97).

227. It observed that "it cannot be claimed that there is at present any systematic practice involving torture, enforced disappearances or abductions. But this positive trend by no means indicates the firm and definitive consolidation of a State ruled by law", since "illegal and arbitrary detention continues to be practised" and "cruel, inhuman or degrading treatment or punishments are still applied" (ibid., para. 113).

228. In his reports, the Director of the ONUSAL Human Rights Division also made many recommendations concerning due process of law, especially in criminal cases, which the Independent Expert has been told have yet to be implemented to any significant degree:

(a) He recommended that judges of first instance should personally conduct the investigations in cases involving violations of the right to life and, in general, in all cases that have given rise to serious social unrest. In cases of violent or suspicious deaths, he recommended that the judge must make an immediate visual inspection, the body must be examined and a thorough autopsy must be performed (ibid., para. 90);

(b) He recommended that judges should invalidate statements made in an atmosphere of intimidation or under any form of coercion. He also recommended that they should exercise more rigorous supervision over places of administrative detention, through regular visits and inspection of the records (A/46/935-S/24066, annex, paras. 48 and 49);

(c) He recommended that the prohibition of incommunicado detention should be scrupulously respected and that the right of any arrested or detained person to have access to counsel immediately and in all cases within 48 hours of his arrest or detention should be guaranteed. He also indicated that a special effort should be made to train public defenders (ibid., paras. 50 and 51);

(d) He recommended that the police should hold persons in administrative detention for a maximum of 72 hours only where the gravity of the charge and the difficulties of the investigation made that strictly necessary. He likewise recommended that judges should use the maximum term of 72 hours for their investigations (before deciding whether to commit the accused to pre-trial detention or to release him) only where that was strictly necessary, and that they should order a person's pre-trial detention only where such detention was necessary to ensure his presence at the trial or to prevent any obstacles being placed in the way of the investigation (ibid., paras. 49 and 52);

(e) He recommended that judges should observe fully the time-limits prescribed by law for concluding the pre-trial proceedings in criminal cases and should ensure that those proceedings in no case exceeded what might be considered a reasonable period. The time-limits prescribed for the trial itself, from its commencement to the rendering of the judgement and notification of a final sentence, were also to be respected (ibid., para. 53);

(f) He recommended that the autonomy and independence of the Public Prosecutor's Office should be strengthened. Prosecutors should play an active role in initiating proceedings and investigating crimes. The Attorney General of the Republic should use all the powers available to him under the judicial system, including that of appointing special commissions, which could be useful for clearing up important cases (ibid., para. 47).

229. The Deputy Minister of Justice informed the Independent Expert that the Legislative Assembly had recently adopted the Legal Aid and Public Defenders Act, the preliminary draft of which had been prepared by his Ministry in order to guarantee respect for the right to legal counsel, although he pointed out that this initiative had been taken pursuant to a pre-existing Ministry policy and was not directly connected with ONUSAL recommendations. Other preliminary drafts also being submitted to the Legislative Assembly pursuant to this policy and awaiting approval concerned the abolition of presumption of guilt and the decriminalization of theft and defraudation among close relatives.

230. ONUSAL also made a number of recommendations involving legislative reforms:

(a) It recommended that a special law to establish the civil status of undocumented persons affected by the conflict should be drafted and should include provisions making it easier to obtain personal identity cards (A/46/876-S/23580, annex, para. 168);

(b) It recommended legislative reform to invalidate extrajudicial confessions as evidence (A/46/935-S/24066, annex, para. 48);

(c) It recommended legislative reform to reduce the maximum period of administrative detention (ibid., para. 49);

(d) It recommended legislative reform to incorporate explicitly in the Code of Criminal Procedure the guarantee that an accused can communicate immediately with his family, legal counsel and humanitarian organizations (ibid., para. 52);

(e) It recommended amendment of the legislation governing release from custody (ibid.).

231. On 24 March and 1 April respectively, two special laws were enacted: the Special Transitional Act Establishing the Civil Status of Undocumented Persons Affected by the Conflict (Decree No. 205) and amendments to the Act on the Replacement of Registers and Entries in the Civil Registry (Decree No. 204). These laws implemented the ONUSAL recommendation on personal documentation and identity documents, a development which was welcomed in the fifth report of the Director of the Human Rights Division (A/46/955-S/24375, annex, para. 102).

232. The Deputy Minister of Justice informed the Independent Expert that his Ministry, pursuant to the policy referred to in paragraph 229 above, had completed a preliminary bill invalidating extrajudicial confessions as evidence in criminal proceedings, and that the bill was to be submitted shortly to the President of the Republic for approval. Preliminary drafts reducing administrative detention to 24 hours and repealing the rules on endangerment without crime had reached the same stage. The Ministry was also studying various amendments to the rules governing pre-trial detention and release on bail during judicial proceedings, as well as regulations governing detention by police authorities.

233. With regard to international humanitarian law, ONUSAL has made a variety of recommendations, the scope and thrust of which have occasionally been modified since the cessation of hostilities. ONUSAL expressed the hope that recommendations to respect fundamental guarantees of humane treatment would no longer be necessary in future, but unfortunately this expectation is far from being realized (ibid., para. 72).

234. In his third report, the Director of the ONUSAL Human Rights Divison raised the issue of indiscriminate attacks on the civilian population (A/46/876-S/23580, annex, paras. 131-141). Although he expressed the hope that such attacks would not require special consideration in future, he observed that the armed forces had not taken the necessary precautions in their attacks, nor had they attempted to establish responsibility for incidents the investigation of which required that disciplinary or criminal proceedings should have been brought. FMLN, for its part, had violated established norms on the precautions to be taken against the effects of attacks (ibid., para. 171).

235. He also observed that, "while international humanitarian law allows insurgent forces to engage in summary executions, it imposes a number of minimum mandatory requirements: existence of a court offering the essential guarantees of independence and impartiality, respect for the principle of legality, procedural guarantees and, in particular, the right of defence both

before and during trial" (ibid., para. 170). The same report referred to an execution by firing squad attributed to and acknowledged by FMLN. The killing, which took place on 26 November 1991, was considered to have violated the rules of international humanitarian law.

236. ONUSAL recommended that FMLN honour its pledge to observe the rules of international humanitarian law concerning the recruitment of minors and reminded it that minors are not to take part in any kind of military operations, even if these are not directly linked with the fighting (A/46/658-S/23222 and Corr.1, annex, para. 170). As indicated in paragraph 84 of this report, this practice seems to have declined since the cessation of the armed conflict.

C. Recommendations made by the commissions established in the negotiating process

237. The Independent Expert was able to compile only limited information on the recommendations made by the commissions established in the negotiating process. The National Commission for the Consolidation of Peace (COPAZ), the commission with the broadest powers, was unable for logistical reasons to report to the Independent Expert on the recommendations it has made or the follow-up given to them. As indicated in paragraph 194, the Ad Hoc Commission has submitted its report to the President of the Republic and to the Secretary-General of the United Nations, but the deadlines for implementing its recommendations, which for the time being have been kept confidential, are still pending. The Commission on the Truth has until 13 January 1993 to submit its report. The composition of the Forum for Economic and Social Consultation has only just been brought into compliance with the Peace Agreement. The Independent Expert is confident that, by the time he reports to the Commission on Human Rights in accordance with his mandate, he will have the necessary information on the work of these commissions.

VI. CONCLUSIONS

238. The peace agreements are the result of a massive effort by the parties to reach an understanding, an effort that also expressed a profound national aspiration for peace and justice. The form and content of the agreements are geared not only to ending the armed conflict by political means, but also to the national enterprise of building a new and more democratic society, imbued with a spirit of solidarity, in which untrammelled respect for human rights is a fundamental means of State action. The task was not simply to end a war, but to eliminate its causes. The nation is thus offered an extraordinary opportunity for progress.

239. At the time of drafting of this report, the peace process has reached a crucial juncture affecting the implementation of various fundamental aspects of the agreements reached (see paras. 34 and 35, above). In order successfully to traverse this period, it is imperative that the will which led

the parties to reach an understanding, and Salvadorian society to encourage them in that objective, should be manifested to the full and sustained throughout the process of implementation of the agreements.

Human rights situation in El Salvador

240. The cessation of hostilities itself eliminates an important source of violations of human dignity and establishes a climate more propitious to coexistence and mutual respect for the rights of individuals. In addition, a climate of peace is bound to be more conducive to the normal functioning of economic activities, and must provide better opportunities for realizing economic, social and cultural rights.

241. Moreover, the peace agreements have provided El Salvador with a model of democratic society designed by consensus, with which the changes agreed to during the negotiations must seek to conform. The central component of that model is the observance and safeguarding of the human rights of all Salvadorians. This state of affairs, too, offers positive prospects.

242. However, the ending of the conflict does not automatically mean the establishment of a climate in which human rights are fully observed and safeguarded. On the contrary, as the present report describes, a number of situations in which human rights are violated still persist, and the resources available to civil society with which to combat them are still weak.

243. Threats to the right to life have taken various forms. Summary executions have continued in the course of this year, though their precise number is not easy to determine; the perpetrators being described as members or former members of military and paramilitary bodies. Incidents and press reports also give reason to fear that the so-called "death squads" have been active. ONUSAL has noted that the Government has not adequately complied with the provisions of domestic and international law requiring that actions that can be equated with summary or arbitrary executions be prevented, investigated, tried and punished.

244. Threats to life resulting from criminal activity appear to have increased. It is a well-known fact that large quantities of weapons of war are in the possession of civilians, outside the control of the authorities and that some of them are in the hands of common criminals. The objective of calling in all weapons of war held by individuals has not been achieved.

245. It is a matter for concern that, during this phase of reconciliation, one can note a recurrence of death threats directed at various sectors of Salvadorian society whether anonymously or by supposedly clandestine organizations, which even have recourse to the mass media, since no regulations exist prohibiting their use for such purposes. The fact of the matter is that people do not perceive the cessation of hostilities as having brought with it the release from fear for which they have so earnestly longed.

246. Integrity and liberty of person continue to be at risk. ONUSAL has concluded that, although there are no indications of the systematic practice of torture, disappearances or abductions, unlawful or arbitrary detention continues to occur and cruel, inhuman or degrading treatment is applied.

247. All in all, it can be said that the situation regarding civil and political rights has improved, but that unless certain characteristics are eliminated as soon as possible, patterns of serious violations of human rights may recur. There is a familiar formula for avoiding that outcome, namely, full compliance with the peace agreements. Economic, social and cultural rights depend to a large extent on implementation of the economic and social measures agreed to in the course of the negotiations.

248. The effects of the ending of the armed conflict on economic, social and cultural rights have not yet made themselves felt; nor have the agreements reached on those rights in the peace process had their effect. Achievement of significant progress in this field in the shortest possible time is imperative if social stability and justice are to be secured.

Effects of implementation of the peace agreements on effective enjoyment of human rights

249. Implementation of the peace agreements presupposes the creation or improvement of measures to ensure compliance by the Salvadorian State with its duty to observe and safeguard human rights. Implementation according to the terms agreed will provide the State with a more appropriate structure with which to ensure effective enjoyment of those rights, and will eliminate some of the causes which in the past have most frequently led to violations.

250. The Office of the National Counsel for the Defence of Human Rights is called upon to play a central role in the promotion and defence of those rights in the future. When it embarked on its activities, it did not have the strength, resources and clearness of purpose necessary to make its presence felt as a truly valuable instrument for the victims of human rights violations. Priority must be given to supporting and strengthening it at the levels of domestic action and of international cooperation.

251. The National Civil Police is another of the pillars of the agreements which bolsters the hope that progress will be made in respect for and safeguarding of human rights. It is an institution conceived in terms of a truly democratic standard: an exclusively civilian body, separate from the armed forces, whose first function is to protect and safeguard the free exercise of the rights and freedoms of individuals. The National Civil Police must not stray from that notion of a democratic, modern police force, integrated in civilian society, rather than engaged in a confrontation with that society.

252. The initial organization of the new body reveals some incompatibilities with the contents of the peace agreements. In addition to the delay in the schedule for implementation, it has been noted that the evlauations of candidates for entry from the National Police have not been brought fully into line with the agreements; an attempt has been made to maintain some degree of military influence in the National Public Security Academy; and there is uncertainty regarding the attitude of the Criminal Investigation Division of the National Civil Police to the plan to transfer the Commission for the Invetigation of Criminal Acts, which is currently attached to the Ministry of Justice but directed by the military and without strong executive powers to investigate serious human rights violations, to the Office of the Attorney General of the Republic.

253. The reforms of the judicial system adopted in the peace agreements were directed towards strengthening the system in order to improve its independence and efficiency, which had been called into question by its incapacity to guarantee due process of law and to determine the liability of persons guilty of serious human rights violations. Some of those reforms are bound to exert a positive influence, examples being the reorganization of the Supreme Court of Justice and the new method for electing Supreme Court Judges by a majority of two thirds of the Legislative Assembly, and for electing the Attorney General of the Republic, the Chief State Counsel and the National Counsel for the Defence of Human Rights. The same may be said of the annual allocation to the judiciary of a proportion of the State budget of not less than 6 per cent of current income.

254. The extent of other reforms will depend on the secondary legislation, to which they were referred by the parties. In this regard one can single out the National Council of the Judiciary, the Judicial Training School attached thereto, and the career judicial service. These are issues of paramount importance in ensuring that the judicial system as such and each individual judge enjoy the independence that is required in a State governed by the rule of law. Nevertheless, COPAZ has not prepared the relevant preliminary legislative drafts as provided for in the agreements. Other preliminary legislative drafts have been prepared, some of which do not adequately reflect what was agreed on.

255. To date, the reforms have not been sufficient to overcome the verticality which is a structural defect of the Salvadorian judicial system. Appointment and dismissal of judges, authorization to practise as a lawyer and disqualification therefrom are the competence of the Supreme Court of Justice. The vertical structure of the administration of justice adversely affects the intellectual freedom of the judge and the independence of lawyers.

256. The reform of the armed forces which is to result from the implementation of the peace agreements must prevent human rights violations in the future. The constitutional reforms, as well as the agreements reached regarding the doctrine and educational system of the armed forces, stress the subordination of the institution to the civilian authority, within the framework of the principles flowing from the rule of law, the pre-eminence of human dignity and

respect for human rights. This is an extremely sensitive issue, since it presupposes a rapid transition by the armed forces to the new model of a democratic society that has emerged from the agreements. Its full implementation will be decisive for the credibility of the process.

Implementation of previous recommendations

257. The last report of the Special Representative contained only recommendations addressed to the constitutional authorities of El Salvador, which basically remain to be implemented.

258. ONUSAL has directed the bulk of its recommendations to the Government, and for the most part they have not been heeded. However, the Independent Expert has been informed that the President of the Republic has ordered priority to be given to implementation of those recommendations. It has also addressed recommendations to FMLN concerning questions of international humanitarian law, particularly prior to the cessation of hostilities, and most of these have not been acted on either. Nevertheless, with the cessation of the armed conflict, this situation is beginning to change.

VII. RECOMMENDATIONS

259. As just indicated, ONUSAL has made a large number of recommendations on subjects directly concerning the observance and safeguarding of human rights. Therefore, first and foremost, the Independent Expert recommends that the parties give those recommendations "their earliest consideration", as called for in the San José Agreement. The same comment applies to the recommendations of the commissions set up under the peace agreements, recommendations which the parties expressly undertook to implement.

260. The Government should take maximum advantage of the presence of the ONUSAL Human Rights Division in El Salvador. Its deployment is unprecedented in the history of the international protection of human rights and has brought together highly trained professionals who are in a position to provide the Government with immediate assistance, thereby enabling it to make substantial progress in the observance and safeguarding of human rights.

261. The strengthening of the Office of the National Counsel for the Defence of Human Rights should be an immediate goal. In order to achieve that goal, the material, technical and human resources set aside by the State for carrying out its tasks under the Constitution must be concentrated on the Office of the National Counsel. The Office itself must determine which problems it should tackle as a matter of priority, on the basis of the San José Agreement and the recommendations made by ONUSAL. Bearing in mind its constitutional powers and the experience gained by similar entities in other countries, the Office must determine the types of action it wishes to take, in the light of both the situation in El Salvador and its own relationship with the governmental and non-governmental sectors. Through international cooperation, the Office of the National Counsel must be provided

with the means of holding one or several seminars in the immediate future focusing on the relevant issues, with assistance from persons with expert knowledge of the issues. At least initially, it would also be helpful if one of the experts could act as a full-time consultant to the Office of the National Counsel.

262. The National Civil Police (NCP) must be set up and developed in accordance with the model that resulted from the peace agreements, as a new force, with a new doctrine, separate from the armed forces. Great care must be taken to ensure that individuals from the armed forces or the former public security forces are not involved in the education of members of NCP and do not become NCP officers. The NCP Criminal Investigation Division must be retained, as a skilled body, under the functional control of the Attorney General of the Republic, for investigating criminal acts.

263. The Independent Expert believes that the separation between the administrative functions of the judicial system and the functions proper of the courts is both beneficial and necessary in order to guarantee the full independence of judges and lawyers. The current system, in which the functions in question are concentrated vertically within the Supreme Court of Justice, should be the subject of a careful review.

264. In any event, the process of amending the National Council of the Judiciary Act must be completed and, above all, the agreements reached in the course of the negotiations must be complied with so as to "guarantee [the Council's] independence from the organs of State and from political parties and to ensure ... that its membership includes not only judges but also representatives of sectors of society not directly connected with the administration of justice". The Act must lay down the rules for the Judicial Training School in accordance with the agreements reached.

265. The process of amending the Career Judicial Service Act must be speeded up in order to ensure that the conditions for admission to the career judicial service include passing competitive examinations and attending the Judicial Training School and provide objective selection, equal opportunities for all candidates and the selection of the best-qualified candidates.

266. COPAZ must carry out its function under the agreements more rapidly and more effectively, as a monitoring mechanism, as a body responsible for the preparation of the preliminary legislative drafts required under the agreements, and as a focal point for ongoing dialogue and cooperation. The same recommendation applies to the Forum for Economic and Social Consultation, within its particular area of competence.

267. The peace process in El Salvador needs greater support from the international community. The implementation of the agreements and of the National Reconstruction Plan calls for resources that the richer countries should provide in the shared, universal interest of promoting the consolidation of peace and respect for human rights. The Independent Expert urges such countries to provide the necessary resources, taking account of the support provided by international organizations in the process.

268. The needs of the majority of Salvadorians regarding economic, social and cultural rights must be met. An urgent first step that must be taken is to implement what was agreed on this subject during the negotiations.

269. To sum up, if lasting, substantial and irreversible progress is to be made in the observance and safeguarding of human rights, the model for Salvadorian society developed during the peace negotiations must be brought into being. The implementation of the agreements is not only an obligation involving the honour of the parties, but the very means of achieving such a society. The Government and FMLN embarked on the negotiations as military adversaries and emerged from them with a joint achievement on a historic scale. It is in the best interests of both parties to foster, preserve and cultivate that achievement. The parties must therefore endeavour not only to implement the agreements scrupulously but also to tackle the difficulties that arise in the peace process with an open mind and in good faith. That is the imperative of the moment.

Notes

1/ S/23999.

2/ E/CN.4/1992/32.

3/ Ibid., paras. 140-141.

4/ Ibid., paras. 142 and 143.

5/ The Constitution of El Salvador requires any constitutional amendment to be adopted by the Legislative Assembly and to be ratified by the Assembly elected for the following term (article 248). Since a new Legislative Assembly was to be installed on 1 May 1991, the preceding Assembly had only three days in which to adopt what was approved at Mexico City. Otherwise, it would have been necessary to wait three years - the length of the Assembly's term - for the constitutional amendments to enter into force. The Assembly did not ratify all the amendments at one time but, rather, divided them into two parts.

6/ There were departures from the agreements on a few points. One such point is the membership of the Supreme Electoral Tribunal and the inclusion of a provision concerning the membership of the National Council of the Judiciary, which the parties had agreed to refer to secondary legislation. See paras. 168-171 of this document.

7/ On 12 June and 19 August 1992.

8/ E/CN.4/1992/18.

9/ Commission to Amend Salvadorian Legislation, Reformas inmediatas al Código Procesal Penal, Part One, vol. II, July 1987, p. 389.

Notes (continued)

10/ S/23999, paras. 45 and 46.

11/ "... for the purposes of the present political agreement, 'human rights' shall mean those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States" (see A/44/971-S/21541, annex, preamble).

12/ Constitution of the Republic, article 194.

13/ "For the purposes of this law, human rights shall be understood to mean civil and political rights, economic, social and cultural rights and third-generation rights envisaged in the Constitution, Acts and treaties in force, and in the declarations and principles adopted by the United Nations or the Organization of American States". (Article 2).

14/ Ibid., article 10.

15/ Constitution of the Republic, article 167 (17).

16/ Ibid., article 1

17/ Articles 4, 8, 10, 11 and 22.

18/ Constitution of the Republic, article 193 (3).

19/ On 12 June and 19 August 1992.

20/ The fifth report of the Director of the ONUSAL Human Rights Division (A/46/955-S/24375, annex) describes the case of María N., who was taken to a military brigade barracks and raped repeatedly, verified by means of a medical examination. The Commission for the Investigation of Criminal Acts, in its report of 11 December 1991, concluded that there were no grounds for attributing the offence to particular individuals (para. 43).

21/ Constitution of the Republic, article 167 (3).

22/ Ibid., article 131 (8).

23/ The National Council of the Judiciary currently has 10 members, 5 of whom are Supreme Court judges, 3 representatives of the Federation of Lawyers and 2 lawyers elected by the law faculties of universities in El Salvador.

24/ Constitution of the Republic, article 182 (12).

25/ Article 172, in fine.

Notes (continued)

26/ Article 186.

27/ Article 180.

28/ Legislative Decree No. 64 of 31 October 1991, published in Diario Oficial (Official Gazette) No. 217, vol. No. 313, of 20 November 1991, effective from 30 November 1991, in accordance with the Decree.

29/ Articles 12 and 45 of the draft.

30/ Diario Oficial No. 182, vol. 308, of 24 July 1990.

31/ Article 168 (12).

32/ Mexico Agreements: amendments to articles 208 and 209 of the Constitution; agreement elaborating on the constitutional reform, B; Peace Agreement signed at Chapultepec, chap. IV.

33/ New York Agreement, VII; Peace Agreemert signed at Chapultepec, chap. V.

34/ E/CN.4/1992/32, para. 141.

35/ Ibid., para. 142.